

NO. PD-0503-17

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

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DEANA WILLIAMSON, CLERK

GEORGE DELACRUZ, Appellant

vs.

THE STATE OF TEXAS, Appellee

Appeal from Travis County
Austin Court of Appeals Cause No. 03-15-00302-CR

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

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ORAL ARGUMENT IS CONDITIONALLY REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Undersigned counsel for the State believes that oral argument is unnecessary because the briefs filed by the parties adequately present the facts and legal arguments. However, if the Court does grant the appellant's request for oral argument, the State respectfully requests that the Court also permit the State to provide oral argument.

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* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The State of Texas, by and through the District Attorney for Travis County,
respectfully presents this brief on the merits in the above-referenced case.

STATEMENT OF FACTS

“If anything ever happened to me, it would be him.” 3 RR 78.

Those words were spoken by Julie Ann Gonzalez when she told her supervisor about her fear of her estranged husband, the appellant. Weeks later, in late March of 2010, Julie Ann told her sister “that she had a bad feeling, and she kept on saying that over and over.” 4 RR 21. Julie Ann feared for her life. The appellant had told her that, if he could not have her or their daughter, then “nobody will.” 3 RR 76-77.

On Friday, March 26, 2010, just days after that repeatedly telling her sister that she had a bad feeling, Julie Ann disappeared, leaving behind a good job, a young daughter who was the focus of her life, a boyfriend whom she planned to marry, and a host of close friends and family members.¹ Julie was “an above average” cell phone user, and she was well known, by those close to her, to be dependable, punctual, and responsive. Because they also knew about the appellant’s history of obsessive, possessive behavior toward Julie, those people were immediately alarmed when she went missing.

The body of Julie Ann Gonzalez was never recovered. At trial, however, the jury received evidence of a violent altercation, between the appellant and Julie, in

¹ At trial, some witnesses referred to Julie Ann Gonzalez simply as “Julie.” That abbreviated version of her name will generally be used in this brief.

which Julie was bloodied and rendered unconscious. *See* 7 RR 8-17. The jury also received a great deal of circumstantial evidence. These and many other pertinent facts are addressed in detail below.

1. Julie's maturity and punctuality

By all accounts, Julie Ann Gonzalez was “very mature” (5 RR 169) and “very” responsible about things (4 RR 300). In high school, she earned college credit by taking college courses. After graduating from high school, she moved out of her mother’s house in Dripping Springs and into her aunt Dora Soto’s home in Austin order to reduce the expense of attending Austin Community College. 3 RR 221-22.

At some point later, Julie and the appellant began living together in a small apartment. *Id.* at 220-22. A few months thereafter, she became pregnant. 3 RR *Id.* at 223. On August 27, 2007, their daughter, L.D., was born. State’s Exh. 7 at 2. The couple and their baby eventually moved into the home of the appellant’s mother at 5809 Garden Oaks Drive in south Austin. *Id.* at 224.

Julie’s focus on achievement continued. She talked to appellant’s sister Liliana “all the time” about the importance of school. *Id.* at 185. Julie also had similar conversations with the appellant’s cousin. 4 RR 298. The appellant’s mother even testified that Julie thought “way too much” that school and learning are important. 5 RR 169.

On May 22, 2009, Julie and the appellant married. She separated from him on November 1, 2009, and relocated to her grandparents' home in Dripping Springs. State's Exh. 7 at 2; 3 RR 17-18. They had separated twice before. 3 RR 312. On December 16, 2009, Julie filed for divorce. State's Exh. 7 at 2.

Earlier in 2009, Julie was hired to work as a cashier at the Walgreen's store on Riverside Drive. She was eventually promoted to pharmacy tech. 3 RR 69. Her store manager testified, "[S]he's a very mature person, I thought, for her age." 3 RR 81. The store manager added, "[I]t's very rare" for a 21-year-old soon-to-be single mother to go to pharmacy school to become a pharmacy tech. *Id.* at 81.

Julie loved her job. 2 RR 253-54. At work, she was "very happy, a happy-go-lucky person [who] got along with everyone." 3 RR 70. Her clients in the pharmacy really loved her. 3 RR 73. At work, Julie never appeared to be under the influence of alcohol or drugs or anything like that. She never showed any signs of mental illness. Julie never spoke to her immediate supervisor of customers threatening her, and there did not seem to be any threat from anybody there at Walgreen's. *Id.* at 91.

Julie's direct supervisor, the pharmacy manager, testified, "I considered her my number one pharmacy tech. I depended on her the most." *Id.* at 90. Julie was never late to work, and she did not have any problems with any coworkers or

customers. *Id.* at 73, 81. According to the pharmacy manager, “She always showed up.” *Id.* at 91.

2. The appellant’s gaming activity

The appellant, “a heavy gamer,” loved playing Xbox games. 7 RR 78; *see* 5 RR 237. He did so to such an extent that it caused problems in his marriage to Julie. 3 RR 202. One such game was *Call of Duty*. 3 RR 225. Julie told her younger sister, Samantha Petri, “that he would just constantly play video games all the time, and that was one of the reasons why he wasn’t taking care of [L.D.]” 4 RR 16. Julie’s aunt Dora Soto testified, “[Julie] would tell me that they would get into arguments because George was always playing video games. He wasn’t doing anything. He wasn’t involved with [L.D.] at all, wasn’t doing his part in helping take care of her or raise her. And she would always complain to him when she ... left [L.D.] with him, because [L.D.] was always dirty, unfed, not changed. So she was very concerned about that.” 3 RR 224-25.

According to Dora, “[Julie] wouldn’t like to go home because of the arguments that they would get into.” *Id.* at 226.

The appellant’s neglect of L.D. continued after Julie filed for divorce. On the Sunday or Monday before she disappeared, Julie visited the home of her aunt Dora. Dora testified, “She was upset because she had just picked up [L.D.] from George or dropped her off. I can’t – I think picked her up. And she was hungry.

Her diaper was dirty. She was upset that she was in the condition that she found her.” *Id.* at 274.

3. Julie’s focus on her daughter, L.D.

Although Julie loved her job and excelled at work, her world really revolved around L.D. 3 RR 218. According to Julie’s immediate supervisor, the child was “[d]efinitely” the focus of Julie’s life. Julie had photos of the child up at work. *Id.* at 92. Julie was a loving mother who doted on her child. *Id.* at 72. According to Julie’s longtime friend Amanda Hays, “[L.D.] was everything to her. I mean, she always made sure [L.D.] came first out of anything.” *Id.* at 285. Julie’s sister, Samantha Petri, testified, “[Julie] said that she loved [L.D.] and that she would do anything for [L.D.]” 4 RR 11; *see also id.* at 299. Similarly, Julie’s aunt Dora testified that L.D. was the Julie’s “main focus at all times after she had her. She was always worried about if she was raising her right, if she needed anything. She would make sure she took her to the doctor when she was sick. She was always number one in her book. You know, she thought about her when she would work. She was always just -- that was her center. She didn’t think about anything else.” 3 RR 217-18.

Significantly, Julie was very attentive to her daughter’s health-care needs. Dora testified:

She always made sure she went to the doctor on time, because [L.D.] had asthma, always made sure she had her medicine, no matter what. She was a good mom.

3 RR 218.

L.D.'s asthma medication was picked up from the Walgreen's pharmacy where Julie worked on Monday, March 22, 2010. 6 RR 154; *see* State's Exh. 130. The label on that box of Albuterol Sulfate, dated March 21, 2010, stated, "USE 1 VIAL VIA NEBULIZER EVERY 6 HOURS." State's Exh. 106 (all-caps formatting in original).

Julie was concerned that the appellant was not giving L.D. the proper care. Julie's sister Samantha testified, "She would constantly tell me that she was worried about leaving [L.D.] with him." 4 RR 12. Julie was concerned not only about the appellant's parenting, but also about L.D.'s physical health. *Id.* at 13. Julie told Samantha that the appellant would not change L.D., clean her, or feed her correctly. And Julie felt like the appellant was not giving L.D. her asthma medication. *Id.* Samantha explained:

She was constantly telling him to give her her medication, like, it was an inhaler, and she would have to take it a few times a day, but by the time Julie would get home from work or anything, she wouldn't -- [L.D.] wouldn't have any of her treatments.

Id.

Earlier in the week of her disappearance, Julie told Samantha that “she was just worried about [L.D.], about her health when she would leave [L.D.] with him.” 4 RR 21.

4. Julie’s excitement about her new car

On March 6, 2010, less than three weeks before her disappearance, Julie used her tax refund to buy a 2006 Chevy Impala. 2 RR 269; 6 RR 174-76. The manager of the dealership observed that she “was very excited about starting her new life, very excited about getting into this new little vehicle....” 6 RR 175.

Asked what the car meant to Julie, her aunt Dora testified, “She was so excited because she did it on her own. She got her own car on her own. It was new to her, and she was thrilled.” 3 RR 258. Julie loved her car and was proud of it. 2 RR 269; 3 RR 35, 80, 91. Julie’s store manager testified, “I’ve never seen somebody talk so much about a vehicle. 3 RR 80.

5. Julie’s plans for her future with Aaron Beaux

In October of 2009, Julie ran into an old boyfriend, Aaron Breaux. 3 RR 244-45. They had dated years earlier when both of them worked for Julie’s grandparents. *Id.* at 232-33. After bumping into each other in a store, they exchanged emails and renewed their acquaintanceship. Julie was “thrilled” and “super excited about Aaron being back in the picture.” *Id.* at 245, 314.

In mid-November of 2009, after Julie and the appellant separated, she and Aaron started going out together. Every now and then, Julie would bring L.D. along. Beginning about two or three months later, Julie and L.D. sometimes stayed with Aaron in his apartment. 2 RR 244-45.

Julie talked to Aaron about L.D. and how “[L.D.] would fit into Julie Ann’s plans throughout life.” 2 RR 243. It was important to Julie Ann that Aaron had strong feelings for L.D. 4 RR 19. According to Aaron’s testimony at trial, Julie “[a]bsolutely” loved L.D., and “[s]he made it clear [L.D.] was the most important thing in her life.” 2 RR 254.

Julie’s relationship with Aaron was going well during the days leading up to her disappearance. *Id.* at 251-52. Aaron testified, “[A]s far as I could tell everything was great. She seemed really happy. It seemed like to her things were going really well.” *Id.* at 252. Julie and Aaron made “plans of living together, being together in the future.” *Id.* at 252. They had talked about getting an apartment together and had actively gone out a couple of times looking for one. *Id.* at 252-53. In fact, they “were talking about getting married, having kids, that type of thing.” *Id.* at 253.

According to Julie’s cousin Michael Soto,” [Julie] was all about [L.D.]” and was “still attentive” to her daughter even after she started seeing Aaron. 3 RR 24,

25. Aaron got along with Julie and with L.D., and “[t]he whole relationship between them was fine.” *Id.* at 24.

According to her sister Samantha Petri, Julie never expressed any fears or concerns about her relationship with Aaron. 4 RR 19. On the contrary, Julie would “constantly” tell Samantha that Julie and Aaron wanted to get an apartment together and that Aaron wanted to get an apartment with a big room for L.D., so that L.D. would have enough space for a bunch of toys and a dollhouse and everything. *Id.* at 19. In addition, Julie talked with her aunt Dora about wanting to marry Aaron and to have children with him. 3 RR 247.

Aaron’s roommate, Joshua Dean, also testified about the plans that had been made by Julie and Aaron. Dean explained, “I didn’t know the timeline, but I knew they were trying to get an apartment and talking about how they would make bills work and make things work on their incomes and times even down to, I believe, even trying to figure out who would watch [L.D.]. I mean, they had thought about it a lot.... I had actually seen the piece of paper they had itemized and listed everything on, incomes, times, all that stuff.” 2 RR 282. To Joshua Dean, “it seemed like the relationship was going well and they had a future together.” *Id.* at 282. Dean explained, “It was good. She seemed real excited. They both seemed real excited about getting together, especially after what she had just been through. So they were looking to moving forward.” *Id.* at 280-81.

Julie also told her “best friend,” Natasha Navarro, about Aaron. 3 RR 321. The two women spoke by phone on the Monday before Julie disappeared. *Id.* at 317. At trial, Natasha summarized the comments that Julie made during that conversation:

“Me and Aaron are so in love, and we got – we went looking at these apartments in Oak Hill. It’s so exciting. It’s going to be two-bedroom. One bath. And I’m excited for us and [L.D.]” ... She was talking about Aaron and how excited they were for moving in together.

Id. at 322.

Julie took family-planning measures. Her prescription for a birth control device was on file at the Walgreen’s store where she worked. 3 RR 81. She was scheduled to pick up a new refill on the weekend that she disappeared. 5 RR 101. That prescription would also have been refilled periodically in the future. 3 RR 83.

6. Julie’s plans for lunch with her aunt Dora

Julie and her aunt Dora Soto were “very, very close.” 3 RR 216. Dora “was basically her confidante, her go-to whenever she needed advice or information.” *Id.* at 216. As far as Dora knew, Julie told Dora her innermost secrets. *Id.* at 264. They would communicate on regular basis (“daily if not every other day”), and they would meet for lunch every Friday, on Julie’s day off. *Id.* at 216. Julie and Dora made plans to get together on Friday, March 26. Dora testified:

[Julie] told me that she was going to do some – she had some business at the courthouse, and she was going to stop by for lunch or come see me at work on Friday. So I was expecting for her to call me...

Id. at 249.

7. Julie's plans involving her cousin Michael

Julie also had a close relationship with her cousin, Michael Soto, who is the son of Dora Soto. 3 RR 9. Julie was almost like a sister to Michael. *Id.* at 217. They typically saw each other four or five times per week. *Id.* at 23. They “talked about pretty much everything,” including her relationship with the appellant. *Id.* at 12.

On Thursday, March 25, Julie was scheduled to pick up Michael after he got off of work at Home Depot. 3 RR 248. She arrived there at around 5:00 p.m. *Id.* at 25-26. According to Michael, everything was fine and normal. She told Michael that she had to go buy laundry detergent. They joked around and had a good time. They also went to Michael's other place of employment to pick up his paycheck, and they then went to a restaurant. *Id.* at 26.

Afterwards, Julie drove Michael to his home and dropped him off there. She told Michael that she loved him, and Michael told Julie that he would see her the following day. 3 RR 26, 27. They had made plans to get together on Friday, March 26. Michael was scheduled to work at Home Depot on Friday, and Julie was supposed to pick him up at 5:00. *Id.* at 48. Michael testified, “She was going

to pick me up from work, and we were going to hang out after that.” *Id.* at 48.

Julie did not say anything to Michael about having plans on Friday that would have prevented her from seeing him. *Id.* at 27.

Julie also had plans relating to her cousin Michael that extended beyond Friday, March 26. She was excited about the birth of Michael’s first son. A date had been set for a baby shower, and Julie “was planning to attend [it].” 3 RR 27. According to Michael, “[S]he was just excited about getting him a gift.... She wanted to go get a gift. And that's what she was looking forward to, to do that weekend.” *Id.*

8. Julie’s plans with her cousin Alyssa

About a week before her disappearance, Julie also made plans to spend some time with her cousin, Alyssa Soto. Julie was going to pick Alyssa up in Julie’s new car and go to the movies. 3 RR 334.

9. Events surrounding Julie’s disappearance

As is addressed below in greater detail, Julie disappeared on Friday, March 26, 2010. Police determined that the appellant was the last person to see Julie alive and also the last person to hear her voice. 5 RR 25. The appellant told police that he last saw her at around 10:30 or 11:00 a.m. that Friday morning. State’s Exh. 63 at 3, 11.

None of the plans described above came to fruition. For example, the call that Julie's aunt Dora was expecting on that Friday never came, and Dora never saw or heard from Julie again. 3 RR 249. The last time Dora heard Julie's voice was on Wednesday, March 24, when Dora asked Julie to pick up Michael Soto after he got off of work the following day. *Id.* at 248. And the last time that Michael saw or heard from Julie was on Thursday evening, when she picked him up from work and dropped him off at his home. *Id.* at 25.

The last time that Aaron Breaux saw or spoke to Julie was at 6:00 a.m. on that Friday, as he left the apartment to go to work. 2 RR 262. Julie never picked up her birth control refill. 5 RR 101. And she never again showed up for work at Walgreen's. 3 RR 79.

After Julie's disappearance, her daughter L.D. remained with the appellant. Julie's car was later found abandoned in the parking lot of another Walgreen's store, one located near the appellant's home. A box of L.D.'s asthma medication was found in the trunk.

When Julie went missing that Friday, her friends and relatives were alarmed.

i. Earlier that week

On the Monday, Tuesday, Wednesday, and Thursday preceding the day of her disappearance, L.D. was staying with the appellant. Julie was originally

scheduled to pick up L.D. on Thursday morning. 2 RR 255. However, the appellant wanted to keep L.D. one more night. *Id.* at 55. Julie agreed to let him do so. *Id.* at 256.

Julie was at work at Walgreen's during the day on Thursday, March 25, 2010. While there, she told her store manager about her plans for the evening. Julie talked about the dinner that she was going to have with the guy that she was seeing and indicated that she was going to swap her baby with the appellant. 3 RR 78. Julie was excited about the dinner and told the store manager that she would tell her about it. Neither Julie nor the store manager was scheduled to work the following weekend, so the store manager stated that she (the store manager) would have to hear Julie's story on the following Monday. *Id.*

After spending Thursday evening with her cousin Michael, Julie dropped him off at his home. She told Michael that she loved him, and Michael told Julie that he would see her the following day. 3 RR 25-27. Later that evening, she purchased groceries from an H-E-B grocery store near Slaughter and Manchaca. Surveillance video suggests that she was alone at the time. She used her bank card, along with her PIN code, to make the purchase. 4 RR 277-78.

On Thursday night, Julie and Aaron went to dinner at a restaurant and were joined by her close friend Amanda Hays. According Amanda, Julie was "excited" and "overjoyed" that night. 3 RR 291. Amanda had not previously met Aaron.

Julie wanted them to meet that night because she wanted Amanda's opinion and approval. Dinner went great. *Id.* at 291-92. Amanda testified, "She and Aaron, that night when we had dinner, were talking about actually looking at places to live, like, permanently, like, houses. I know they were staying in an apartment. They were actually planning on looking at houses and talking about having kids and getting married." *Id.* at 292. That was the last time that Amanda saw or spoke with Julie. *Id.* at 292.

That Thursday night, Julie went to Aaron's home, watched a movie, and stayed there overnight. 2 RR 256-57. Julie's car was at Aaron's apartment complex when she stayed with him that night. *Id.* at 270. The couple had dinner there. According to Aaron, nothing unusual happened that night. *Id.* at 256. Aaron's roommate, Joshua Dean, was also present in the apartment that Thursday night. He saw Aaron and Julie there but did not speak with them. *Id.* at 256.

ii. Friday morning at Aaron's apartment

Julie was not scheduled to work on Friday, March 26, 2010. That morning, Aaron got up in order to go to work. Julie asked him to take off work and stay with her that morning. However, Aaron, an electrician, could not do so because he needed to work in order to pay his bills. Julie was okay with him going to work. 2 RR 256-58. At trial, Aaron testified, "It was a very average day. I got ready to go

to work and Julie was still there and I just kissed her good-bye and told her I loved her and see you later.” *Id.* at 257. Aaron left the apartment at 6:00 a.m. *Id.*

Between 8:00 and 8:40 that same morning, Aaron’s roommate, Joshua Dean, was awakened by the sound of water turning on and off and doors opening and closing. He knew that Julie was making those sounds, because Aaron had already gone to work at that point and Julie was the only other person in the apartment. 2 RR 203-04. When Dean got up and went into the living room, at around 9:00 a.m. that Friday, Julie had already left the apartment. *Id.* at 203, 205.

On Friday, March 26, Julie was planning to go to the appellant’s house to pick up L.D., and her cousin Michael Soto was supposed to accompany her. Unfortunately, Michael had to work. 3 RR 65.

iii. Julie goes missing on Friday

At around 9:00 on the morning of Friday, March 26, Aaron Breaux sent Julie a text message, just asking her how she was doing. However, she did not reply. Aaron then tried to reach Julie by phone, but there was no answer. He sent additional text messages to her and then, at lunchtime, called her again. There was still no answer. 2 RR 259.

At around 2:00 p.m. on Friday, Aaron received a text message from Julie’s phone. 2 RR 259. At trial, Aaron described what the message said: “Something

along the lines of, I can't do this anymore. It pretty much sounds like she was breaking up." *Id.* at 260. Asked whether this came as a surprise to him, Aaron testified, "Absolutely." *Id.* Shocked by the message and not understanding what was going on, Aaron kept sending text messages to Julie and again tried to reach her by phone. *Id.*

At some point, Aaron became suspicious. He had a gut feeling that something was wrong. 2 RR 260-61. Aaron testified, "I felt like somebody else had her phone and so I asked her in a text message, I said, if this is you I need you to tell me what my middle name is because that's something only she would know not somebody else if somebody else had her phone." *Id.* at 261. Aaron received a response stating, "I don't feel like playing games." *Id.* Aaron then replied with a text message stating that he wanted to talk to Julie over the phone. Aaron called Julie's phone again after he got off work, but her phone was off at that time. *Id.*

Even though Julie did not reside in Aaron's apartment, she kept some of her clothing and some of L.D.'s things there. When Aaron returned to his apartment at about 4:00 p.m. on Friday, he checked to see whether Julie had removed those things from the apartment. Those things were still there; it did not look like she had packed up and left. 2 RR 263.

iv. Julie's love letter to Aaron on Friday morning

Instead of finding that Julie had removed her things from the apartment, Aaron found, on his bed pillow, “a love letter” that Julie had left for him. 2 RR 264; *see id.* at 265; State’s Exh. 4. After having received the above-described text messages from Julie’s phone, Aaron found it “very confusing” to receive the love letter. 2 RR 269. Aaron’s name appeared on the letter “as big as day” and had been colored in. *Id.* at 265. It was evident to Aaron that she had spent a lot of time preparing the two-page letter, which also had “all of that curly Q stuff” that Julie would typically write on her letters to Aaron. *Id.* at 266; *see id.* at 266.

In her love letter, Julie spoke of her happiness with Aaron, her plans to start living with him during the following August, and also of their plans to get married and have a son. 2 RR 267-68; *see* State’s Exh. 4. Near the end of the letter, Julie also expressed a desire to live with Aaron in a specific apartment complex: “I really hope we can get into Southwest Trails. I really like it.” 2 RR 268.

The last time that Aaron talked to Julie was at 6:00 a.m. on the morning of Friday, March 26, 2010, as he was leaving his apartment, going to work.² The love letter was the last letter that he ever received from Julie. *Id.* at 262-64.

² Police later confirmed, through information provided by Aaron Breau’s employer, that Aaron was at work on the day that Julie disappeared. 2 RR 271; 6 RR 236.

10. People immediately knew that something was wrong

Julie was known by friends and relatives to be dependable, punctual, and responsive. Their inability to communicate with her on that Friday, March 26, and thereafter was so out of character that it was immediately cause for alarm.

According to her sister Samantha, it was unusual for Julie to be out of contact with her family: “Because if she wouldn’t talk to one relative, then she would always talk to another relative. She would -- every day she would constantly talk to someone in the family.”³ 4 RR 23.

Indeed, according to the State’s cell phone expert, records associated with Julie’s phone reveal that she was “an above average user” in the months before her disappearance. During that time, her phone had approximately 25 to 30 inbound and outbound calls per day, 40 to 50 texts per day on average, and 60 to 70 data connections on average per day. 7 RR 85. Julie’s phone continued to operate until around 11:22 p.m. on the night of Saturday, March 27, 2010. 6 RR 244; 7 RR 77-78.

³ There were periods when Julie and her mother were estranged, but that did not stop her from talking to Samantha or to her aunt Dora Soto or to her cousin Michael Soto. Despite her strained relationship with her mother, Julie continued her relationships with everybody else. 4 RR 23.

11. Julie's aunt Dora Soto was immediately alarmed

Julie's aunt Dora was waiting to hear from her that Friday. She testified, "[Julie] told me that ... she had some business at the courthouse, and she was going to stop by for lunch or come see me at work on Friday. So I was expecting for her to call me, and that never came." 3 RR 249. When she did not hear from Julie, Dora was "immediately alarmed." *Id.* Dora explained, "I was immediately concerned because that was not her norm. That was not Julie to not call, to not make contact with anybody, to not tell anybody what she was going to be doing or where she was." *Id.* As a rule, when Julie made plans to see Dora, Julie would stick with that and, if something came up, Julie would contact Dora. *Id.* at 249-50. Dora indicated that "Julie was always on the grid, so to speak." *Id.* at 249.

Dora tried to reach Julie by phone multiple times, but the calls kept going to voicemail. She also sent text messages to Julie, but there was no response. 3 RR 250. When she did not hear from Julie, Dora waited only a few minutes before trying to contact other family members. *Id.* at 250. Later on the evening of Friday, March 26, Dora Soto contacted the police, and an officer arrived shortly before 11:00 p.m. *Id.* at 251. She also spoke with police several times that weekend. *Id.* at 253. She told the police, "It was not her normal behavior to be out of -- that she

was very responsible. She would keep in touch. She had had issues with an ex.” 3 RR 254.

12. Julie’s sister and mother were very concerned

Julie and her sister Samantha Petri were close, and Julie confided in Samantha about things that were going on in her life. 4 RR 10. Julie visited Samantha’s home earlier in the week of Julie’s disappearance. *Id.* at 21. They continued to have their normal contact during that week, but Samantha realized that something was wrong when Julie did not contact her at all on Friday, March 26. *Id.* at 22.

It was brought to Samantha’s attention that there were multiple blogs on Julie’s Myspace account saying that she wanted time for herself, that she needed to get away, that she just wanted to be left alone, and the family should not worry about her. *Id.* at 24. The messages surprised Samantha. It did not sound like the Julie that Samantha had known her entire life. *Id.* at 24.

Samantha tried to reach her by phone, but Julie never answered. Samantha sent text messages to Julie but received a reply stating, in effect, “that the family should stop worrying about her and that we should leave her alone.” 4 RR 27.

Samantha also received a text message from Julie’s phone in which the sender referred to Samantha by a nickname that was not widely known. Julie was the only person in the family who called Samantha by that nickname (“SP”), and

not very many people even knew that Julie sometimes called her SP. *Id.* at 28.

Even though that text message contained that nickname, the messages did not “add up” to Samantha. *Id.* at 28.

Samantha brought the situation to the attention of her mother, Sandra Soto, who was “very concerned.” 4 RR 24. They drove to the home of Aaron Breau’s grandparents, to see if they knew anything. *Id.* at 25. They also contacted Aaron, but he knew nothing. By that time, Samantha was “very concerned” that no one had been in contact with her sister. *Id.* at 26. Samantha and other family members drove to her aunt Dora Soto’s house in Austin. *Id.* at 28.

13. “Everybody was already freaking out”

On the afternoon of Friday, March 26, Julie’s cousin Michael Soto tried to contact Julie, who was supposed to pick him up from Home Depot. He testified, “I knew something was wrong because I was calling and texting. Like I said, we talked every day.” 3 RR 28. Ordinarily, if Michael called Julie’s phone, she would pick up the phone and answer it “[n]o matter what.” *Id.* Some people might respond to a phone call by only sending a text message, but Julie “wasn’t like that.” *Id.*

Among the text messages that Michael sent to Julie was one that asked what was wrong. He received a response stating, “Nothing.” 3 RR 50. Michael then asked his mother to pick him up from work. When she arrived, he asked her if she

had talked to Julie. Michael testified, “She hadn’t. We were both calling and texting her. Nothing. And that’s when we went by [the appellant’s] house.” *Id.* at 28-29. They looked for Julie’s car there “[b]ecause that was the last place we knew she went that anybody heard from her.” *Id.* at 29. They did not see her car there. *Id.*

When Michael and his mother returned to their home, family members started arriving. 3 RR 29. According to Michael, “Everybody was at my house, like, my whole family.” *Id.* at 35. Aaron Breau showed up there as well. *Id.* at 54. They were talking about Julie. Describing the mood that Friday evening, Michael testified, “[E]verybody was already freaking out trying to figure out where she was.” *Id.* at 29 (emphasis added). That was “[b]ecause no one had heard from her. It wasn’t like Julie just not to talk to anybody.” *Id.*

14. Other people were concerned

On Friday, March 26, Julie’s longtime friend Amanda Hays became aware of Julie’s disappearance when she saw a blog post on Facebook purporting to indicate that Julie wanted to run away. Amanda felt “that something was really wrong and that I needed to talk to her.” 3 RR 293. Amanda tried calling Julie but got no answer. *Id.* at 293. Referring to Julie’s demeanor at dinner on the night before, Amanda testified, “[F]or her to go from happy to sad, it just didn’t seem

like her.” *Id.* at 293. According to Amanda, the blog post “didn’t sound like [Julie].” *Id.* at 302.

Julie’s cousin Alyssa Soto also learned that Friday that Julie had gone missing. Alyssa repeatedly called Julie’s cell phone but never got through to her. 3 RR 335-36. Alyssa received text messages from Julie’s phone, stating that Julie wanted to be away, that she was very sad. But Alyssa knew that something was wrong: “It was just rambling. It wasn’t ... Julie. It wasn’t her personality. If there was a problem, we would know. We were very close to talk about things like that.” *Id.* at 337. To Alyssa, the messages were “[c]ompletely out of character,” and “weren’t even spelled correctly.” *Id.* at 338. She testified, “I just knew that it wasn’t my cousin.” *Id.*

When Julie failed to show up for work on the following Monday (March 29, 2010) as scheduled, the store manager thought it was out of character. The store manager called Julie’s cell phone, but the call immediately went to voicemail. 3 RR 79. Julie’s supervisor (the pharmacy manager) was likewise concerned: “I never saw her when she was supposed to come in that morning, I was worried about her because that was unlike her....” *Id.* at 94.

15. Dubious electronic messages on Friday and Saturday

Some of Julie’s friends and family members had received text messages, purportedly from her, including some to the effect that she had met someone

named James and that she was possibly running away to Colorado with him.

“James” was supposedly a website designer who had just built a house in Colorado and who had had met Julie through her work. 5 RR 15. The text messages did not specify the last name of “James” or provide any information as to a particular location in Colorado. *Id.*

The jury received evidence suggesting that the appellant was the person sending and posting the deceptive messages. A number of messages purporting to have been written by Julie were posted on her Myspace page after she went missing. The following message was posted there at 7:06 p.m. on Friday, March 26, 2010:

Everything Is so hard I hate hurting people I love I’m with the one I loved and I’m with the other one that I love. I hate how things turned out I just wish I never met them. I’m here miles and miles away from everybody hopefully I will find myself in these few days. He better show me a good time here and make me forget about everything in Austin. I don't want to go back and tell him I screwed up I'm so afraid but I'll see what happens

State’s Exh. 142; *see* 6 RR 259-60. At 12:29 p.m. on March 26, the following message was posted:

going away hate all this bs want to run away

State’s Exh. 143. Posted from a cell phone, the message specified Julie’s mood as “hate this bs.” *Id.* Then, at 1:57 a.m. on Saturday, March 27, this message was posted on her Myspace account:

really happy for leaving austin I love this place and i miss my ay bay bay

State's Exh. 143 (emphasis added). Posted from a cell phone, the message specified Julie's mood as "amused." *Id.* The lead detective found the phrase "my ay bay bay" to be significant because the appellant had used the same phrase in a blog post on his own Myspace page. The appellant's blog post, placed on his MySpace page on February 10, 2010, read, "Chillin' with my ay bay bay." 6 RR 275.

At 11:01 a.m. that Saturday, this message was posted on Julie's Myspace account:

cant decide what to eat for breakfast

State's Exh. 143. Posted from a cell phone, the message specified Julie's mood as "hungry." *Id.* At 12:38 p.m. on Saturday, this message was posted on her account:

im really hurt right now i dont know if this heart can take it anymore

State's Exh. 143; 6 RR 272-73. Posted from a cell phone, the message was accompanied by a "happy face" emoticon but specified Julie's mood as "heart broken." *Id.* At 9:40 p.m. on Saturday, the following message was posted:

Just wanted to say im ok and that people shouldnt worry about me and to stop bothering me i want to enjoy my time

State's Exh. 143; 6 RR 272. Posted from a cell phone, the message specified Julie's mood as "adventurous." *Id.*

Julie's friends and relatives questioned the validity of those messages. For example, Julie confided in her aunt Dora about many things. However, Julie never talked to Dora about any person named James, and Dora did not know a person named James whom Julie knew. 3 RR 259. Dora knew that Julie kept journals and liked to write. *Id.* at 259. Dora later went through the journals but did not see anything there that caused her concern for Julie with respect to her "basically throwing in the towel and wanting to run away." *Id.* at 260.

Similarly, Julie never told her sister Samantha about wanting to move to Colorado, be with somebody else, and be away from her family. 4 RR 20. According to Samantha, Julie never talked about just running away from everything, just leaving everything behind. *Id.* at 16. Regarding Julie's daughter L.D., Julie never told Samantha that having a child was such a burden that Julie wanted to get away from the child. In fact, "[Julie] actually did the opposite. She said that it was one of the best things that happened to her." *Id.* at 12.

And Julie "never ever" talked to her longtime friend Amanda Hays about a new guy in her life names James. 3 RR 303-04. A text message regarding James was the first time that Amanda heard about such a person. *Id.* at 304.

Nor did Julie talk with her cousin Michael about any other guys that she was seeing when she was seeing Aaron. *Id.* at 24. Soto explained that Julie "wasn't really like that" and that "it was just Aaron." *Id.*

Likewise, Julie never told her best friend, Natasha Navarro, that she was seeing somebody other than Aaron. 3 RR 316. Julie never talked with Natasha about anybody named James. *Id.* at 322. Natasha was unaware of anybody named James until Friday, March 26, the day when Julie disappeared. 3 RR 316. Natasha was in New Orleans at the time. *Id.* at 317. On that day, Amanda Hays (a friend to both Samantha and Julie), alerted Natasha to “some weird stuff” that had been posted on Julie’s Facebook and Myspace pages. Natasha checked those sites and found the postings to be “weird” and “awkward.” *Id.* at 320. Natasha repeatedly called Julie’s phone but got no answer, so she then sent a text message to Julie. Immediately after making her last phone call to Julie’s phone, Natasha received a text message from Julie’s phone. *Id.* at 316. In essence, the text message stated, “I didn’t love Aaron. I thought I did.” *Id.* at 323. To Natasha, all of the digital messages were out of character for Julie. *Id.* at 320. As for that text message, she testified that those words were “something Julie would never say. That sounds like something [the appellant] would say.” *Id.* at 323.

Further, Natasha added, “This isn’t Julie at all ... because Julie would never leave [L.D.]” *Id.* at 324. Natasha had serious doubts about who sent the text message from Julie’s phone. She did not believe that it was Julie. *Id.* at 328. And there had never before been a situation in which Julie avoiding letting Natasha hear Julie’s voice. *Id.* at 321.

Likewise, Julie never expressed to Aaron an interest in being with somebody else other than him. During the entire time that Aaron knew Julie, she never expressed a desire to go to Colorado. Aaron never knew of her talking to anyone in Colorado. 2 RR 253.

At work, Julie never talked to manager of her Walgreen's store about a person named James – not a boyfriend, a customer, or anyone else named James. 3 RR 82. The store manager testified, "I've never heard that name.... And we had no record of a James, period, no employee that worked there, no customers that were transferred out or in. No." *Id.*; see 5 RR 97-98.

A thorough review of records relating to Julie's cell phone disclosed that her phone never called a phone located in Colorado and never called a phone with a Colorado area code. 7 RR 153. During the period beginning on March 25, 2010, and ending on March 28, 2010, Julie's cell phone never left the Austin area. *Id.* at 190-95.

Referring to Julie, a missing-persons detective concluded, "It was not generally her normal demeanor to walk away from a child. It's not a very common thing for someone with a young child to leave and sever contact." 5 RR 14.

During a conversation with a neighbor, i.e., Joe Cruz, the appellant made reference to a text message on Julie's phone and actually showed the message to Cruz on a cell phone. 3 RR 165-67. The message was from Julie's sister to Julie.

The message stated, in effect, “You need to come back and take care of this. Everything is kind of messed up around here. If you don’t come back here, then I’m coming to you.” *Id.* at 168.

According to the lead investigator, Julie’s sister Samantha had not sent that particular message to any person or place where the appellant would have been able to receive it. 6 RR 231. At that time, the appellant was not a Myspace friend of Julie. *Id.*

16. Julie’s new car is found on Sunday morning

On the morning of Sunday, March 28, Julie’s aunt Dora spotted Julie’s car parked in the parking lot of the Walgreen’s store at the corner of Stassney and South First streets. 3 RR 255; 4 RR 127. That Walgreen’s store was located “a few blocks over” from the appellant’s home at 5809 Garden Oaks Drive. 4 RR 126; *see* 4 RR 29. It was “[p]retty easy walking distance.” 7 RR 139. Somebody could have driven the car to the Walgreen’s and walked back to the appellant’s house. 5 RR 90.

After seeing the car, Dora ran up and down the aisles of the store, looking for Julie, but she was not there. Dora called the police. 3 RR 255. A police officer arrived at the store at about 9:00 that morning and confirmed that the car, a 2006 Chevrolet Impala bearing a temporary buyer’s tag, was registered to Julie. 4

RR 123. Julie was “nowhere to be found.”⁴ *Id.* Sandra Soto (who was Dora’s sister and Julie’s mother) was present, as was Aaron Breaux. *Id.* at 123-24. Aaron showed the officer the love letter that Julie had left for him on Friday morning. *Id.* at 125. Dora was told, among other things, that the police could not process the car or take it in because, at that point in time, there did not appear to be foul play. 3 RR 256.

Dora and Sandra Soto stayed with the car until the following Monday morning. Julie never came to pick up her car. 3 RR 257. On Monday, the dealership where Julie bought the car sent an employee unlocked the car. *Id.* at 258. Regarding the contents of the car, Dora testified, “[W]hat struck us odd was that [L.D.]’s asthma medication was in there.” *Id.* at 259. It was “asthma medication that [L.D.] takes and Julie frequently refills the prescription.” 3 RR 259.

⁴ At trial, the overnight cashier at that Walgreen’s store testified that, between 10:00 p.m. on Friday and 1:30 a.m. on Saturday, a woman came into the store, told him that she was having car problems, and asked him if she could leave her car there. The woman reportedly said that she was going to have someone look at the car the next day. The cashier testified that he told her that the car would not be towed and should be fine if she left it there. 4 RR 92-94. Later Sunday evening, however, police reviewed the store’s surveillance video but did not see Julie on the video. *Id.* at 174, 209. Police also showed the cashier some still photos from the video recording of people who entered the Walgreen’s store that night. He did not see Julie in any of those photos, and he was also unable to positively identify any woman in the photos as the woman who spoke with him that night about the car. *Id.* at 105-06, 170, 195-98, 209-11. According to the lead homicide detective, there was no credible evidence whatsoever that Julie ever entered that Walgreen’s store or dropped her car off there. 6 RR 300. The investigation showed that the overnight cashier “could not have seen Julie Ann Gonzalez enter that store.” *Id.* It was also determined that nothing was wrong with the vehicle. 5 RR 46; 6 RR 182; see 3 RR 35.

As was noted above, that box of medication was picked up from the Walgreen's pharmacy where Julie worked on March 22, 2010, four days before she disappeared. 6 RR 154; *see* State's Exh. 130. The label on that box of Albuterol Sulfate states, "USE 1 VIAL VIA NEBULIZER EVERY 6 HOURS." State's Exh. 106 (all-caps formatting in original).

17.No signs of life

After Julie disappeared, there were no signs that she was still alive.⁵ 5 RR 84. An APD officer working at the Austin Regional Intelligence Center (also known as the Fusion Center) used the resources of that agency in an attempt to locate Julie. He checked with the U.S. Department of Homeland Security and learned that Julie had no passport and no visa and had not requested either one. 7 RR 234. That federal agency had no record of Julie leaving the country from any U.S. land ports, airports, or seaports. *Id.* at 236. There was no evidence to suggest, and no reason to believe, that she had crossed the Rio Grande river and gone into Mexico. Doing so would have been inconsistent with her behavior. 5 RR 85.

The Fusion Center officer also searched for insurance claims, but Julie had not made such a claim since 2006. 7 RR 234. The officer also ran Julie's social security number in the database of the Texas Workforce Commission, but there was no work history. *Id.* at 236. He sent photos of Julie to all 50 states plus Puerto

⁵ At trial, defense counsel conceded that "it's pretty obvious that she's missing..." 7 RR 240.

Rico and the U.S. Virgin Islands, for facial-recognition comparisons with images in their respective databases. *Id.* at 236-38. However, “the only real, 100 percent match we got was from here in Texas, and that was from her, Julie Ann Gonzalez's, actual driver's license photo.”⁶ *Id.* at 236.

The officer at the Fusion Center ran a TLO report, which “will pull up all assets, so your vehicles, everything else you might own, also where you've lived, telephone numbers, e-mail addresses, acquaintances, associates, relatives, [and] several more things...” 7 RR 235. He also searched Accurint, which is similar to TLO. However, both searches were negative; he found no proof that Julie was alive after March 2010. *Id.*

Beginning in late March of 2010, a crime analyst with the Texas Department of Public Safety's Missing Person's Unit performed similar searches. 7 RR 220-21. The analyst utilized multiple resources—including Accurint, LexisNexis, TLO, TDEx, and NCIC/TCIC—in an attempt to locate Julie. Some of those resources were used on multiple occasions. *Id.* at 223-24. That effort continued up until the time of the trial in April of 2015. *Id.* at 228. However, the analyst never got a hit that completely matched all of the information submitted in association with Julie (i.e., her name, date of birth, driver's license number, and social security

⁶ Seven of those states, the District of Columbia, and both territories have no database. 7 RR 239.

number). *Id.* at 225-26. Partial hits were passed on to a detective for further investigation, but none of those led to Julie. *Id.* at 225, 226. Despite all of the investigative efforts expended since the disappearance of Julie on March 26, 2010, the analyst at DPS was also unable to identify any proof that Julie was still alive. *Id.* at 228.

Police contacted authorities in Colorado to see if anyone had applied for a new driver's license under Julie's name or anything of that nature. No such information was found. 5 RR 16. According to the lead homicide detective, police were unable to find anything suggesting that Julie Gonzalez is still alive. 6 RR 279. Stated more bluntly, police had no "credible evidence that Julie Ann is anywhere other than dead." *Id.* at 301.

18.No alternative explanation of Julie's absence

Nobody, including the police, could identify any reason why Julie might have disappeared. Julie did not give any indication, to any of her close friends or family members, that she had a desire (much less an intention or a plan) to walk away from the life she lived, especially the daughter whom she so dearly loved. And there is no basis for any inference that Julie departed of her own accord. When she went missing on Friday, March 26, she did not take any vehicle with her. 6 RR 240. Nor did she take any of her clothes or shoes or any of her personal possessions from any of the places where she had been staying. 4 RR 50; 6 RR

240. As far as her sister Samantha could tell, Julie did not pack a suitcase or take anything else that she would have taken if she were going somewhere. 4 RR 50-51. Julie had money in her bank account but apparently did not withdraw or spend any of that money either in connection with or after her disappearance. 6 RR 240-42.

Nor is there any indication that her disappearance was attributable to substance abuse or some other personal problem. Julie did not have any medical conditions and was not suicidal. 3 RR 101-02. She was not using cocaine or heroin or anything like that. She was not a big drinker, and she did not have any mental health issues. Nor did Julie have any problems with gangs or issues where people were out to get her. 4 RR 31. She did not have any gambling debt or anything like that. 3 RR 34. For reasons explained below, the only thing that Julie wanted to get away from was the appellant. *Id.* at 34. But there is no evidence suggesting that she moved away or somehow went underground in order to do so. “Julie was always on the grid, so to speak.” *Id.* at 249.

19. The appellant’s confession to Justin Stewart

At trial, the jury received testimony from an inmate named Justin Stewart, who recounted statements made by the appellant about an incident that occurred in

the appellant's home.⁷ Stewart met the appellant while both men were incarcerated in the Travis County jail. 7 RR 8. Jail records confirm that the Stewart and the appellant were housed in the same unit on two separate occasions in October 2013. *Id.* at 42-43.

The two men initially met in passing in late 2013 when they attended a prayer circle, and the appellant showed Stewart a drawing from a magazine and said something about the things that women can make men do. 7 RR 9-10, 12. At trial, Stewart told the jury what the appellant told him:

He just felt bad about -- I mean, he was almost in tears. I mean, he felt bad about something. He just told me about an altercation he had with a girl that he had been seeing that, I guess, he had his child with. They had an argument. I believe it was over some guy that she was talking to or something.

Id. at 14.

Stewart clarified that the appellant said that the appellant and "his girl" "had an argument about her romantic interest in some other guy." 7 RR 14. According to Stewart's testimony, the appellant said that the woman was injured during the ensuing altercation inside of the couple's home:

Q. And then what happened as part of that argument?

⁷ Nobody from the District Attorney's office or the Austin Police Department offered Stewart any benefit for his testimony, and Stewart did not receive any such benefit. 7 RR 20-21. Stewart's mother and girlfriend encouraged him to report the appellant's comments to the police. 7 RR 30. In addition, Stewart testified, "There's a little girl involved.... [and] I do, you know, care about kids. I just figured, after I found out what he was there for, maybe what he told me had something to do with that." 7 RR 30.

A. I know she tried to leave at one point, and he tried to stop her, and I mean things got physical. I know -- I know they had a fight, basically.

Q. A physical fight?

A. Yes, sir. I mean, yeah. I mean, he didn't say he punched her or nothing like that. He just talked about wrestling around with her.

Q. Did he say what happened while he was wrestling around with her?

A. Yeah. At one point she had -- they fell, and she hit her head. I don't remember what he said, whether it was the table or counter. I think he said the counter or something. I don't remember where he said this altercation happened inside the home. Like I said, this is a conversation that happened, you know, three years ago -- two years ago, and I wasn't really taking notes. But an altercation happened. She fell. She hit her head. She was apparently bleeding. At that point, I guess she, like any female would -- most females would in that situation was going to call. I don't know if she was going to call the cops or her dad or her brother, whoever. And, I mean, I guess he tried to stop her.

7 RR 15-16.

The appellant “was in tears pretty much” when he was saying this to Stewart. *Id.* at 16. According to Stewart, the appellant mentioned “that [the appellant] and Julie had a daughter and that after he assaulted Julie she told him she was not going to let him see [L.D.] again and that he was going to jail.”⁸ 7 RR 35.

⁸ Stewart also testified as follows:

Q. Did he say anything about a child being involved between them?

A. Yes. I don't remember if he told me he had a daughter or if that was something I read later on in the paper, but I do know that -- yeah, I knew about him having a daughter.

Q. At any point, did he say that she had threatened him regarding a daughter?

A. I think he mentioned something about that at one point. I really -- honestly, I can't say for sure that I remember that actually being said.

During his testimony, Stewart clarified the sequence of events described to him by the appellant:

Q. So they -- they had a struggle. First they have an argument about a guy that she's talking to, then they have a struggle as she's trying to leave; is that correct?

A. Yes, sir.

Q. And then she's threatening to call somebody. And then he stops her from calling anybody?

A. Yeah. I mean, apparently the second time around -- I know -- I know she became unconscious. She was knocked out. And I know he freaked out. He didn't know what to do. I mean, that's not -- I mean, I don't know. He didn't really go much further after that. That's pretty much all he told me.

Q. He told you about there being blood.

A. Yeah.

Q. He told you about her being unconscious.

A. Yeah. I mean, the reason -- I didn't really even -- really even think too much of it then because I'll be honest I've -- I've had, you know -- I've been in some pretty bad relationships myself where there's been altercations, and there's been blood. I didn't -- I figured maybe he just felt bad about having a fight with his wife or his girlfriend.

7 RR 16-17.

The appellant told Stewart that “he wrestled with her and caused her to bump her head” and that “she was unconscious at the end of their struggle.” 7 RR 32, 34. Stewart recalled, from the appellant’s statements, that “this took place in his house.” 7 RR 34; *see also* 7 RR 15 (“I don't remember where he said this altercation happened inside the home.”); 7 RR 17 (“I believe it was his house. I’m assuming it was a place where he stayed.”).

7 RR 17-18.

20. Digging behind the playhouse on Friday morning

In the appellant's back yard were two sheds. The smaller shed, referred to at trial as "the playhouse," had a blue door and was situated near the left rear (i.e., northeast) corner of the yard. The larger shed, referred to as "the shed," had a white door and was located near the center of the back yard. *See* State's Exh. 115. According to the appellant's mother, the two sheds were placed in the yard by her ex-husband during or before 2006. 5 RR 166.

On Friday, March 26, 2010—the day of Julie's disappearance—there was a disruption of telephone service in the vicinity of the appellant's house. The outage occurred when an underground cable was broken or hit with a shovel or similar tool. 6 RR 104-06. An AT&T technician was able to pinpoint exactly where the underground cable was damaged. *Id.* at 118, 135-36. The source of the problem was located in the appellant's back yard, behind the playhouse (i.e., the smaller shed) and about one foot away from the fence at the rear of the yard. *Id.* at 123, 125.

The telephone company received its first "trouble ticket" (i.e., customer complaint) regarding that outage at 9:47 a.m. on that Friday. 6 RR 104-06, 120-23. When the technician went to the scene on Monday, March 29, 2010, to make a temporary repair, the site of the problem was under a pile of wood. *Id.* at 119, 125. It was not immediately apparent to the technician what had caused the problem

because the ground above the underground cable was covered by the woodpile and he did not see any “obvious damage” (6 RR 137) to the ground:

[I]t was definitely a problem. Any kind of underground trouble, as repairmen, we are looking for something new, a new fence; if it was in the front yard, new concrete, new something, dig marks, something. We didn’t have that in this case, and it was very, very strange indeed.

6 RR 125-26; *see id.* at 138.

About a week later, the technician returned to the scene with a crew of contractors. *Id.* at 126. To expose the damaged cable, the contractors moved the woodpile and dug a hole. *Id.* at 128-29. The technician concluded that the damage had been done at 9:47 a.m. on Friday, March 26, and that “someone had repeatedly struck it as if digging down into the ground.” 6 RR 130, 131.

21. Prior stalking, threats, and violence by the appellant

In mid-November of 2009, after Julie and the appellant separated, Julie and Aaron started going out together. 2 RR 244-45. Julie told her aunt Dora “that she was going to be very careful because she was concerned that [the appellant] would get wind of it and ... get upset and just do something crazy.” 3 RR 245-46.

Julie told her friend Amanda Hays that she “felt controlled” by the appellant. 3 RR 289. And when Julie talked to her supervisor about getting a divorce, Julie again indicated that the appellant was being “controlling” with her. *Id.* at 92. The supervisor testified, “She mainly would tell me that she was unhappy. That was

mainly how she talked, that she was -- felt under pressure, I guess, maybe that he was -- he would call a lot and want to know where she was.” *Id.* at 92-93.

Julie’s cousin Michael testified that the appellant was “verbally abusive” to Julie and that “[i]t got physical somewhat that I know of.” 3 RR 15. Michael testified that “[t]here was the ‘I have to be the boss’ type thing” and that things “really got complicated” between Julie and the appellant after their daughter was born. Michael explained, “It was more of, ‘You’re going to do as I say.’ Julie would tell me she didn’t really want to live around his family. But it was, ‘No. This is where you’re going to be. This is the way it is.’ She would want to come over. She would stay away due to the fact of him being reclusive from our family and not wanting to come over.” *Id.*

After Julie separated from the appellant, he continued to hang out with Michael. They would play video games, and the appellant would, on each such occasion, ask Michael questions about Julie. 3 RR 18-19. Michael testified, “[A]fter a while you could tell that he wanted to know something about what she was up to.” *Id.* at 19.

Julie’s difficulties with the appellant persisted after she filed for divorce on December 16, 2009. 3 RR 230; State’s Exh. 7 at 1. Julie attempted to get him to sign the papers, but he was unwilling to do so. 4 RR 51-52. Julie was divorcing the appellant regardless of the fact that Aaron Breau was back in the picture. 3

RR 314. Julie told Samantha that “he just didn’t want to let go of her.” *Id.* at 52. Referring to statements made by Julie a week and a half before she went missing, Samantha testified, “[S]he just kept repeating herself. ‘He doesn’t want to let go. He’s obsessed with me.’” *Id.* at 53.

Aaron’s roommate, Joshua Dean, was aware that Julie was filing for divorce and “trying to get away from [the appellant].” 2 RR 281. Dean was aware that “things were unstable and fairly rocky between her and [the appellant].” Dean testified, “Her separation from [the appellant] and the whole situation with [L.D.] and going back with that it made her uncomfortable. When she first started coming over, she was a little more withdrawn, a little more uncomfortable. As time went on, she loosened up, seemed a lot more happy.” 2 RR 282.

But Julie still had cause for concern. In 2009, Julie expressed some of those concerns to her aunt Dora, who testified as follows:

The thing that would come up is she did state a few times that he followed her. He would bother her at work. It was interfering at work. She noticed his personality was changing. She said he was losing it, that he would say off-the-wall things, that he was going to hurt himself.

3 RR 235.

Julie expressed to Aaron a fear about the appellant finding out, through L.D., that Julie was seeing Aaron. Because of that concern, Julie took steps to ensure that L.D. did not say Aaron’s name in the appellant’s presence. Julie avoided

calling Aaron by name while Julie was present; instead, Julie generally referred to him as “friend.” 2 RR 246. By mid-February of 2010, however, L.D. began referring to Aaron by name because she had heard Julie saying his name. *Id.* at 246-47. This development caused Julie to be concerned and her aunt Dora was a little concerned as well. 3 RR 248.

The management team at Julie’s Walgreen’s store received multiple complaints about the appellant, and the appellant was actually kicked out of the store. 3 RR 75. The store manager testified:

I got some complaints that he was lingering around in the pharmacy, the waiting area, watching Julie work. He was calling numerous times while she was trying to work, bothering her, and her productivity wasn’t going very well because he was totally trying to control every little situation. So I had to kick him out of the store.

3 RR 75.

At one point after Julie separated from him, the appellant claimed that he was suffering from amnesia after having sustained a head injury while working out of state. A person purporting to be an emergency-room doctor call Julie and told her that her husband had been in a serious accident and that she needed to go and be with him. 3 RR 235. A week later, the appellant placed a phone call to Julie’s mother. Julie’s relatives were skeptical. Dora Soto testified, “[I]t’s funny that he forgot his memory, but he remembered her phone number to call her.” *Id.* at 236.

Julie realized that the appellant had faked the amnesia in an attempt to get her attention. *Id.*

On January 10, 2010, the appellant took another drastic step in an apparent attempt to get Julie's attention. On that date, Julie reported to the police that the appellant had attempted to kill himself. 3 RR 104. The incident occurred on a day when Julie picked up L.D.. After Julie and L.D. drove away from the appellant's house, he called Julie and directed her attention to a suicide note that he had placed in the child's diaper bag. Julie immediately returned to his house and alerted his family members. *Id.* at 237. The appellant had consumed a bunch of pills. 5 RR 171.

Julie was concerned about her own safety. 3 RR 288. More specifically, there was a concern that the appellant would hurt her. 3 RR 264, 272. Indeed, Julie told her Walgreen's store manager, MyLinda Burrow, that she feared for her life. Burrow testified:

She would come in in the mornings early, I guess she felt comfortable talking to me, so she would come in before her shift, and she would just start -- like, one instance she said, "I fear for my life. I don't know what's going on." I know that this was like right after, I think, they got the divorce. And one instance she told me that he had told her that he cannot have her or [L.D.], nobody will. (sic) I mean, he did tell her that. That's what she told me.

3 RR 76-77 (emphasis added).

Julie also told Ms. Burrow that the appellant would follow her in his car. *Id.* at 77. During one incident, she actually called Burrow while he was following her. Julie told Burrow, “He’s right behind me. I don’t know what to do. I don’t want to get out of my car. I’m just driving around.” *Id.* That incident occurred only a week or two before Julie went missing. *Id.*

Julie’s aunt Dora testified about another reason for the concern for Julie’s safety:

There were postings that he had made on his Myspace ... stating that he wanted to hurt himself, or he wanted to plan something. He was going to follow with his plan or something.

And there was an e-mail that I saw of -- in her Yahoo that she kept where he basically stated that she ruined his life, that he wanted nothing to do with her. He told her to fuck off. He was done with her. He was just angry. It was an angry e-mail.

3 RR 272. Dora testified that the appellant “was already pissed off at [Julie]” because Julie wanted a divorce and he did not want one. 3 RR 272-73.

According to Dora, Julie told her mother and her cousin that “she [had] been abused by George physically.” *Id.* at 264. Dora had questioned Julie a few times “because she did appear in front of us with bruises on her arms.” *Id.* Julie’s younger sister, Samantha Petri, testified about an incident in which the appellant assaulted Julie:

One weekend when I was staying with my sister, they got into an argument, and they both stormed off to the room, and I heard banging against the walls. My sister came out, and she said to me to stay close

with her and that he slapped her. Her face was really, really red from it.... She was shaking because she was really scared. And she told me that she was scared. I was sitting there, and I was trying to calm her down because she was crying a lot. She was even sweating because she just got so nervous, and she was having a panic attack afterwards. I was sitting there, and I was trying to calm her down.

4 RR 14.

That incident occurred while Julie and the appellant were still residing together. *Id.* at 15. About a week or two later, Samantha witnessed another incident of physical aggression by the appellant: “Julie was trying to get ready for work and George was trying to get everything together for something and Julie was walking away from him because she didn’t want to argue with him and he grabbed her arm and he yanked her towards him.” 4 RR 15.

About a month before Julie disappeared, she told her store manager “that if anything ever happened to her it was him.” 3 RR 78.

When Julie visited Samantha’s home earlier in the week of her disappearance, Julie told Samantha “that she had a bad feeling, and she kept on saying that over and over.” 4 RR 21.

22. Visitation

Julie was “very concerned” because the appellant “was trying to restrain her or try[ing] to keep her there” every time that she went to his house to pick up L.D. 3 RR 237. During one incident, which Julie mentioned to her aunt Dora, Julie

“went to pick up [L.D.] ... at George's home, and he jumped in front of the vehicle, jumped out of the vehicle, didn't want her to leave.” *Id.* at 264-65.

This behavior continued even after the appellant's suicide attempt. *Id.* at 238. Julie's relatives advised her to take someone with her for each exchange or to do it in public. *Id.* at 237. Julie would typically do so. Most of the time, Julie would get her cousin Michael Soto to join her. 2 RR 250; 3 RR 65.

At one point after the separation occurred, Julie asked Michael to go with her to the appellant's residence. According to Michael, “She told me that she had go get some stuff and she didn't feel comfortable going alone, so I had told another one my friends to go with me because we were in the mindset that he wanted to do something to her.... So we pretty much went as somewhat enforcers to make sure that didn't happen.” 3 RR 20.

While they were there, Julie told Michael and his friend that the appellant “was asking her to go inside and, like, trying to close the door with her in the room.” *Id.* at 21. Michael's friend stood in front of the door to make sure that the appellant would not be able to close it. Michael and/or his friend stayed in the room throughout the episode so that they “could watch all corners at all times.” *Id.* Michael testified about the appellant's behavior during that incident: “I've seen him normally, and that wasn't him normally. He was real funny about things.” *Id.* The appellant “kept pressuring” Julie during that incident. *Id.* at 22. She did not

want to deal with him, so she did not get all of her property at that time. *Id.* That incident occurred about a month or two before Julie disappeared. *Id.* at 21-22. Some of the things that Julie left behind at the appellant's house, including her journals and photos, later came up missing and were never found. *Id.* at 66.

On January 22, 2010, Julie filed a motion with the court for temporary orders requiring that the appellant's visitation with L.D. be supervised. Julie's motion was "based on his suicide attempt and on previous behavior." 3 RR 242; State's Exh. 9 at 1. Temporary orders were issued one week later, on January 29. 3 RR 143; State's Exh. 10.

23. The appellant's blog posts reflect anger and a plan

On January 22, 2010—the same day that Julie filed her motion for supervised visitation—the appellant posted the following message on his Myspace page:

cleaning some old memories away

State's Exh. 137; *see* 6 RR 265. The posting characterized the appellant's mood as "busy cleaning." *Id.*

On February 23, 2010, the appellant posted this message there: "fucking hated wen people lie fucc u b*tch[.]" State's Exh. 137; 6 RR 264-65. On March 7, 2010, the appellant posted the following message on his Myspace page:

the way things r going its leaning toward my original plan

State's Exh. 136 (emphasis added); 6 RR 262. On March 8, he posted:

wat i know im not a good person a good friend or a good father fuck it
I hate this shit

State's Exh. 136; 6 RR 263. The posting characterized the appellant's mood as

"failure." *Id.* On March 18, 2010, he posted this message on his Myspace page:

"hate wen people lie i dont understand why they cant say the truth[.]" State's Exh.

136; 6 RR. The posting identified the appellant's mood as being "aggravated." *Id.*

All of those messages were posted via a mobile device. 6 RR 263-64, 272.

After Julie went missing, her sister Samantha reviewed the blog posts on the appellant's Myspace page. One of them, set forth above caused her concern.

Dated March 7, it read, "the way things r going its leaning toward my original plan[.]" 4 RR 47.

24. The photo found on the appellant's "jail broken" iPhone

During the search of the appellant's home in May 2010, police seized his iPhone. They determined that the phone was "jail broken," which means that it was being used only as a WiFi-only device. 6 RR 41. A detective testified, "[I]t can connect to a WiFi source, but that's it." *Id.* at 43. The phone had no cell service, and it had not been successfully used to make outgoing calls since February 2010. *Id.* at 42.

On the appellant's phone was a photo of Julie with her boyfriend Aaron Breaux.⁹ 6 RR 48-49; *see* State's Exh. 99.

25. Internet access at the appellant's home

In March 2010, the appellant lived in his mother's house on Garden Oaks Drive, along with his mother and his three sisters. 3 RR 184. That house is located in Travis County, Texas. *Id.* at 108; *see id.* at 122; 6 RR 57.

On May 24, 2010, when police searched the house pursuant to a warrant, the appellant's Xbox console was in his room, near a window on the front of the house. 6 RR 14-15. When a detective turned on the Xbox, it connected to a strong, unsecured wireless connection. *Id.* at 13, 16. If somebody has a wireless connection that is open, i.e., unsecured, then anybody can use that connection to access the internet without a password. *Id.* at 12, 26-27. With internet access, an Xbox console can be used to communicate with other people, either via message or via voice. 5 RR 232-33. That connection observed by the detective originated from a home across the street from the appellant's house. 6 RR 17, 36-37. That neighbor was unaware that the appellant had been using her internet services, and she had not given him permission to do so. *Id.* at 77.

⁹ Also on the appellant's phone was a photo showing the appellant and [L.D.] at the Tony Burger Center, which sometimes hosts a carnival. 6 RR 48. That photo appeared to have been taken on Saturday, March 27, the day after Julie disappeared. 4 RR 241, 269; 6 RR 239.

During the search of the appellant's house, a detective saw a Facebook account on the appellant's Xbox console. The console was preset to automatically open the Facebook account without the entry of a password. 6 RR 19. The user name for that account was "zEo." A computer in the bedroom of the appellant's sister Liliana connected to an open, wireless internet connection that was also named "zEo." *Id.* at 20, 27-28. That connection, which belonged to the appellant's family, was really strong in her room but really weak in the appellant's room. *Id.* at 20, 39. The appellant's Xbox would not connect to that wireless connection. *Id.* at 20. An iPad Touch also connected to the wireless connection named "zEo." *Id.* at 21, 28.

Because the appellant's Xbox gaming tag was "No Mercy zEo" and the WiFi source within his house was "zEo," investigators "thought that was just odd that he was connecting to a WiFi source across the street rather than his own WiFi within his house." 6 RR 40.

26. The appellant's family activities on Friday

On the morning of Friday, March 26, all five members of the appellant's household (i.e., the appellant, his mother, and his three sisters) were at their home, and L.D. was also present. At 5:30 a.m., the appellant's mother left for work. The appellant took his youngest two sisters to their elementary school and returned home. Later, he made the five- to seven-minute drive to remaining sister's high school, dropping her off there before school started at 9:15 a.m. 3 RR 187-90.

The appellant picked his sisters up from their respective schools later that day. When he picked up the oldest sister at 4:15 p.m., the appellant had the youngest two sisters with him, and L.D. was present as well. They had just finished eating food from the McDonald's restaurant. They typically went to the McDonald's restaurant that is located on South 1st and William Cannon. 3 RR 191-92.

At trial, Liliana Delacruz (the oldest of the appellant's three sisters) testified that it was "very unusual" and "strange" for the appellant to have L.D. with him. 3 RR 195, 198. She considered it "strange" because Julie was supposed to pick L.D. up that Friday and "Julie was really strict on what time [L.D.] had to be ready to be picked up." 3 RR 195. According to Liliana, Julie "was very possessive about having [L.D.]" 3 RR 195. At some point shortly before that Friday, there had been a problem because L.D. was not at the appellant's house and ready to be

picked up. 3 RR 196. On that occasion, Julie told Liliana that, if L.D. was not ready to be picked up at the scheduled time, Julie “was going to threaten George to take away custody of [L.D].” 3 RR 196.

According to Liliana, the appellant told her that “Julie Ann had come over and asked him to keep her for the rest of the weekend.” 3 RR 198; *see id.* at 193. L.D. was with the appellant and his family from that point on. *Id.* at 199.

27. The appellant used Julie’s bank card and cell phone

The jury received evidence suggesting that the appellant used Julie’s bank card and cell phone, beginning in the day she disappeared. That evidence suggests, further, that the appellant was the person who used that phone to send deceptive messages to Julie’s friends and relatives regarding the reason for her disappearance.

As was stated above, the appellant told police that the last time he saw Julie was earlier that Friday, at around 10:30 or 11:00 a.m. State’s Exh. 63 at 3, 11. That Friday afternoon, Julie’s bank card was used in three transactions. The first transaction occurred at the Walmart store located at 9300 South I-35, in the Southpark Meadows center. The second use of the bank card occurred at a McDonald’s restaurant that was inside of that Walmart store. The third transaction occurred at a stand-alone McDonald's restaurant that was located at William

Cannon and South 1st Street. 4 RR 233. These debit-card transactions were subsequently attributed to the appellant.¹⁰ 6 RR 238, 241.

All three of those transactions differed in a significant way from a transaction that occurred one day earlier. On the preceding Thursday, Julie had purchased groceries from an H-E-B grocery store. 4 RR 278. She used her bank card, along with her PIN code, to make the purchase. *Id.* at 277-78. When that same card was used in the three transactions on the Friday after her disappearance, it was used as a credit card and no PIN number was entered. *Id.* at 235-36.

Later that Friday, and again on the following days, the appellant used that card at a Best Buy store.

The significance of all of these transactions—at Walmart, at McDonald’s, and at Best Buy—derives from the information in the phone records associated with Julie’s phone, which are addressed in detail below. Those records suggest that her phone was in the vicinity of those locations when those transactions were consummated. 7 RR 147-48, 158.

It must be remembered that the content of many of the messages sent from Julie’s phone on Friday and Saturday was out of character for Julie. *See, e.g.*, 3 RR 323 (testimony of Natasha Navarro that words in text message were

¹⁰ At trial, defense counsel conceded “that [the appellant] made those purchases at Walmart and Best Buy.” 7 RR 187.

“something Julie would never say but instead “sound[] like something [the appellant] would say”).

i. Walmart at Southpark Meadows

At about 2:20 p.m. on Friday, March 26, Julie’s bank card was used to make a purchase in the amount of \$65.38 at the Walmart store located at 9300 South I-35, in the Southpark Meadows shopping area. 4 RR 246, 280; State’s Exh. 53. The person who used the debit card “did not have her PIN number so ran it as a credit.” *Id.* at 247. The person using the card signed a receipt, but police determined that the signature was not that of Julie. 7 RR 118. According to a receipt provided to police by Walmart, the items purchased included a coloring book, various child-care products, and \$19.99 card containing points for use with an Xbox game known as *Call of Duty: Modern Warfare*. 4 RR 248-51; *see* State’s Exh. 57.

The Xbox card was later activated, and police thereafter determined that it was activated by the appellant. 5 RR 107-08. Other products matching the items listed on the receipt were also found in the appellant’s house when it was searched. 4 RR 270; 5 RR 111. Police also found a torn-up photo of Julie that had been taped back together. 5 RR 111.

ii. McDonald's inside of Walmart at Southpark Meadows

At about 2:23 p.m. on Friday (four minutes after the transaction was completed at Walmart), a purchase in the amount of \$8.28 was made at the McDonald's restaurant that was located inside of that same Walmart store. 4 RR 246, 282; State's Exh. 36.

iii. Video evidence from Southpark Meadows

Surveillance video showed the appellant, accompanied by L.D., inside of the Walmart store located at the 9300 South I-35 at around the time when the transactions were made there. 4 RR 238-42, 254. Specifically, they were caught on camera there at 2:21 p.m. on Friday, March 26, 2010.¹¹ *Id.* at 256-57.

Police looked for Julie in the Walmart surveillance video but did not find her. 4 RR 257. At the time of her disappearance, the appellant had no money in his own bank account. *Id.* at 266. The appellant's bank account had maintained a negative balance since January 2010, and his account was charged off and closed as of March 31, 2010. *Id.* at 286-87.

¹¹ The clothes worn by the appellant and [L.D.] in the video were the same that they were wearing in a profile photo from the appellant's Myspace page. The profile photo showed the appellant and [L.D.] at a carnival. 4 RR 269. The profile photo was taken and posted on the appellant's Myspace page sometime shortly after Julie went missing.

iv. Stand-alone McDonald's

At about 2:54 p.m. on Friday, Julie's bank card was used to make a \$6.71 purchase at the stand-alone McDonald's restaurant located at William Cannon and South 1st Streets. 4 RR 246, 283; State's Exh. 36.

v. Best Buy transactions

When searching the appellant's house on May 14, 2010, police found some receipts relating to transactions that the appellant had made at the Best Buy store located in the area of Highway 290 and Mopac, in Sunset Valley. 4 RR 274; 5 RR 113. Those receipts addressed three separate transactions.

At 9:02 p.m. on Friday, March 26, 2010, the day of Julie's disappearance, the appellant made a purchase at Best Buy, using her card to buy DVDs, candy, and headgear to be used with video-gaming systems. 4 RR 274. Receipts reflect that he was in the vicinity of that store from 8:51 p.m. through 9:02 p.m. 7 RR 84.

At 1:14 p.m. on the next day, Saturday, March 27, the appellant exchanged the headgear for a different type of headgear. 4 RR 275. To consummate that transaction, the appellant would have been required to present something that identified him as the "George" whose name appears on that receipt. 7 RR 132.

On Sunday, March 28, 2010, at 7:39 p.m., the appellant bought two more DVDs from that Best Buy store. 4 RR 275-76.

Police secured from Best Buy the surveillance video relating to the time of those transactions. Julie was not captured on video. 6 RR 155-56.

vi. Changes in the usage of Julie's phone

Prior Friday, March 26, 2010, Julie's cell phone would typically depart from the vicinity of the appellant's residence within a few minutes after its arrival there. 7 RR 81, 85. That was consistent with somebody dropping off or picking up a child as part of a custody arrangement. *Id.* at 81. However, beginning at 11:32 on Friday, March 26, Julie's phone was in the vicinity of the appellant's residence for extended periods of time, some in excess of three hours at a time. *Id.* at 81, 85. The State's cell phone expert concluded that "[t]his is uncharacteristic of the activity related to her device." *Id.* at 85.

Moreover, after Julie's phone arrived in the vicinity of the appellant's house that Friday, there were "uncharacteristic excessive periods where the device is turned off, where it does not make connection with network." 7 RR 86. Before arriving there that day, Julie's phone was typically on all of the time. *Id.* According to the State's expert, it is possible that somebody without a charger for the phone turned it off in order to reserve power on the phone. *Id.* at 87.

All of the inbound calls made to Julie's cell phone after 10:00 a.m. on that Friday were either unanswered or diverted to voicemail. 7 RR 87. The cell phone

expert concluded, “This is uncharacteristic for her device's call history for the period reviewed, as she would typically place and receive numerous calls per day, some lasting several minutes in length.” *Id.*

From 10:50 a.m. on that Friday through the following Saturday, there were approximately 27 data connections associated with Julie's device, approximately 22 which were in the vicinity of the appellant's house. 7 RR 88. According to the expert, the 22 connections amounted to “uncharacteristically heavy traffic” relative to the past use of that phone while in that vicinity. *Id.*; see State's Exh. 145, PPT page 106.¹²

In addition to all of those data connections, there was, on that Friday and Saturday, “a significant spike in the call activity related to her device in the vicinity of [the appellant's] residence.” 7 RR 149; State's Exh. 145, PPT page 105. Not only was it “uncharacteristic” for that phone to be “hanging out in that vicinity,” but also uncharacteristic was the fact that there were no outbound calls made from that phone during that period. And none of the inbound calls made to Julie's phone on those days were answered. 7 RR 149-50.

Phone records also showed “uncharacteristic” activity relating to text messages. 7 RR 88. During a period beginning at 11:32 a.m. on Friday, March 26,

¹² State's Exhibit 145 includes multiple items. A citation in the form of “State's Exh. 145, PPT page *x*” refers to Slide *x* of the PowerPoint presentation named “State of Texas vs. George De La Cruz.pptx.” That presentation was utilized at trial by the State's cell phone expert.

and ending at 11:46 p.m. on the next day, there were approximately 234 text messages, including 108 inbound texts that were sent to the phone while it was turned off and not connected to the network. 7 RR 89. Of the remaining 126 text messages (which connected to the network), 116 texts were in the area of the appellant's home. 7 RR 89, 151; State's Exh. 145, PPT page 107.

vii. Possession of Julie's phone early Saturday morning

A couple of times per month, the appellant took his sister Liliana to visit her boyfriend Javier Carrasco in Javier's mother's apartment in the Timbers apartment complex on Clayton Lane in north Austin. At times, the appellant played video games, in that apartment, on his Xbox console. 3 RR 200-01; 5 RR 220-21. About 75 yards away from that apartment was the apartment of Martina Reyes. 4 RR 200-01. Ms. Reyes had an open WiFi connection. Records reflect that the appellant's cell phones were in the vicinity of the Reyes residence on multiple occasions in the months before Julie's disappearance. 7 RR 90.

Viewed in the requisite light, the evidence supports an inference that the appellant had Julie's cell phone with him at the Timbers apartment complex during the early morning hours of Saturday, March 27, i.e., fewer than 24 hours after she went missing. According to the State's cell phone expert, Julie's cell phone pinged off of the cell tower near Ms. Reyes's residence. 7 RR 89-90. Specifically, records pertaining to Julie's phone reflect that data connections were made while

the phone was in that vicinity, at 1:28 a.m. on Saturday and again at 1:48 a.m. 7 RR 104; *see* State's Exh. 145, PPT p. 50. According to the expert, this was "[v]ery uncharacteristic" because Julie's phone was never in that vicinity at any other time during the period reviewed (i.e., October 1, 2009 through June 18, 2010). 7 RR 89.

The appellant used Ms. Reyes's open WiFi connection on other occasions. The activity records in the appellant's Xbox reflect that, on March 20, 2010 (five days before Julie went missing), that console also connected with Ms. Reyes's unsecured WiFi connection.¹³ 7 RR 208. Those records also show that the appellant's Xbox machine was used to play his favorite game (*Modern Warfare*) on that date. *Id.*

The jury also received evidence suggesting that the appellant, on the evening of March 31, 2010 (five days after Julie disappeared), used Ms. Reyes's WiFi connection to access both the appellant's Myspace account and Julie's Myspace account. 6 RR 266. Specifically, that WiFi connection was used eight times that evening to access the appellant's Myspace account. The first such connection to the appellant's Myspace account occurred at 5:25 that evening, another one occurred at 5:35 p.m., and the last one occurred at 8:10 p.m. 6 RR 280; *see* State's

¹³ Javier Carrasco never used the appellant's Xbox console to communicate with other people. 5 RR 233.

Exh. 147. The record suggests that a message relating to Julie's disappearance was posted on the appellant's Myspace page that evening. *See* State's Exhibits 138 (referring to message "[p]osted at 7:36 PM Mar 31 from Mobile") and 139 ("we have done everything we could and dont know what else to do").

At about 5:42 p.m. on that same date—only 7 minutes after the 5:35 p.m. connection to the appellant's account—that same WiFi connection from Ms. Reyes's apartment was used to access Julie's Myspace account. 6 RR 280; 7 RR 209-10.

viii. Location of Julie's cell phone on Friday

At 1:08 a.m. on the morning of Friday, March 26, Julie's phone was in the vicinity of Aaron Breaux's residence. 7 RR 111. At around 10:00 a.m. on Friday, her phone was in an area southwest of Aaron's residence and may have been travelling. 7 RR 112. State's Exh. 145, PPT page 66.

From 11:32 a.m. through 1:51 p.m. on Friday, Julie's phone was in the vicinity of the appellant's residence. 7 RR 112-13, 115; *see* State's Exh. 145, PPT page 67. Among the activity on the phone at that location during that span were multiple data connections, multiple outgoing text messages to Alyssa, and a text message to Michael. State's Exh. 145, PPT page 67.

At 1:51 p.m. on Friday, Julie's phone connected to a cell tower southwest of the appellant's residence and then travelled in a southwesterly direction toward the

Walmart store at Southpark Meadows. 7 RR 115-16; *see* State's Exh. 145, PPT page 68. From 2:12 p.m. through 2:37 on Friday, the phone was in the vicinity of that Walmart store. *Id.*; 7 RR 121. Among the activity on the phone during that span was a phone call from Aaron, but that call was not answered. 7 RR 116.

By 2:38 p.m. on Friday, Julie's phone had left the vicinity of Walmart and was heading toward McDonald's. 7 RR 117; State's Exh. 145, PPT page 68. Among the activity on the phone during that span was another phone call from Aaron, but that call likewise went unanswered. State's Exh. 145, PPT page 68.

From 3:00 through 3:08 p.m. on Friday, Julie's phone was back in the vicinity of the appellant's residence. 7 RR 122; State's Exh. 145, PPT page 80. Among the activity on the phone during that span were outgoing text messages to Aaron and Amanda. State's Exh. 145, PPT page 80. There was also a data connection. *Id.*; *see* 7 RR 122.

From 3:09 p.m. through 7:20 p.m. on Friday, Julie's phone was still in the vicinity of the appellant's residence. 7 RR 123. Among the activity on the phone during that span were multiple outgoing text messages to Amanda, an outgoing text message to Aaron, and multiple data connections. State's Exh. 145, PPT page 81.

By 8:37 p.m. on Friday, Julie's cell phone had left the appellant's residence and was in the vicinity of the Best Buy store in Sunset Valley. 7 RR 124-25;

State's Exh. 145, PPT page 82. Among the activity on the phone at that location were data connections at 8:37 and 8:59 p.m. State's Exh. 145, PPT page 82.

At 10:26 p.m. on Friday, Julie's cell phone made another data connection while in the vicinity of the appellant's home. 7 RR 126.

ix. Location of Julie's cell phone on Saturday

As was pointed out above, Julie's phone made a data connections while in the vicinity of Martina Reyes's apartment in north Austin at 1:28 a.m. and 1:48 a.m. on the morning of Saturday, March 27. 7 RR 104, 126; State's Exh. 145, PPT page 50.

From 9:44 a.m. through 11:46 a.m. on Saturday morning, Julie's phone was back in the vicinity of the appellant's residence. 7 RR 128; State's Exh. 145, PPT page 88. Among the activity on the phone during that span was an outgoing text message to Aaron Breaux. State's Exh. 145, PPT page 88.

Around noon on Saturday (i.e., from 11:58 a.m. through 12:19 p.m.), Julie's phone was still in the vicinity of the appellant's home. Two text messages were sent to Aaron. State's Exh. 145, PPT page 89. Julie's phone remained in the vicinity of the appellant's residence from 12:29 p.m. through 12:42 p.m. on Saturday. 7 RR 129. Two more text messages were sent to Aaron. State's Exh. 145, PPT page 90.

At 12:50 p.m. on Saturday, Julie's phone was travelling. 7 RR 130. By 1:19 p.m. that day, the phone had left the vicinity of the Best Buy store in Sunset Valley and was located in a place slightly east of that store. 7 RR 134; State's Exh. 145, PPT page 93. At 1:25 p.m. on Saturday, November 26, 2016, Julie's cell phone was back in the vicinity of the appellant's home. A data connection was made at that time. 7 RR 134; State's Exh. 145, PPT page 94.

Significantly, at 1:28 p.m. on Saturday, Julie's cell phone connected with a cell tower that covers the vicinity of the Walgreen's store where Julie's car was later recovered. 7 RR 135; State's Exh. 145, PPT page 94. Julie's aunt Dora spotted the car there the following Sunday morning. 3 RR 255; 4 RR 127. However, the appellant told a neighbor, Michelle Corpus, that he was the person who discovered Julie's car at Walgreen's. *See* 6 RR 225. In light of all of the evidence presented at trial, including evidence that the Walgreen's store was "[p]retty easy walking distance" from the appellant's house (7 RR 139), the jury could reasonably have concluded that the appellant was the person who parked that car there.

From 1:31 p.m. to 1:38 p.m. on Saturday, Julie's phone was back in the vicinity of the appellant's residence. State's Exh. 145, PPT page 94. During that brief period of time, there were incoming calls from Natasha and Amanda that were not answered and also outgoing text messages to Natasha and Amanda.

State's Exh. 145, PPT page 94. According to the expert, "[W]hat's happening there is somebody is willing to text, but they are not willing to talk." 7 RR 136.

From 1:38 p.m. to 2:17 p.m. on Saturday, the phone remained in the vicinity of the appellant's residence. 7 RR 137, 139, 140; State's Exh. 145, PPT pages 94, 96, 97. Among the activity on the phone during that span were multiple outgoing text messages to Natasha. State's Exh. 145, PPT pages 94, 96, 97. The phone may have moved to another location near and to the south of the appellant's home during that timeframe (i.e., at 2:10). 7 RR 140-41; State's Exh. 145, PPT page 97.

From 2: 25 p.m. to 6:31 p.m. on Saturday, the phone remained in the vicinity of the appellant's residence. 7 RR 141; State's Exh. 145, PPT page 98. Among the activity on the phone during that span were multiple data connections and outgoing text messages to Natasha and Amanda. State's Exh. 145, PPT page 98. There was also a call from Julie's aunt Dora that was not answered. *Id.*; 7 RR 142.

From 6:31 p.m. to 9:36 p.m. on Saturday, Julie's phone remained in the vicinity of the appellant's residence. 7 RR 142-43; State's Exh. 145, PPT pages 99, 100. Among the activity on the phone during that period was an outgoing text to Natasha. State's Exh. 145, PPT pages 99, 100.

By 10:49 p.m. on Saturday, Julie's cell phone had travelled to the vicinity of the Tony Burger Center, where a carnival was going on. 7 RR 143-44; State's Exh. 145, PPT page 100. The phone had a data connection while there. *Id.* The

jury received evidence that the appellant, L.D., and others went to a carnival there that night. 3 RR 211.

From 11:12 p.m. through 11:22 p.m. on Saturday, Julie's phone was back in the vicinity of the appellant's residence. 7 RR 144. Among the activity on the phone during that span were a data connections and more outgoing text messages to Samantha. State's Exh. 145, PPT pages 100, 101. The last activity on that phone on Saturday was an outgoing text message to Samantha at 11:22 p.m. 7 RR 146; State's Exh. 145 at 101.

x. A change in the appellant's Xbox usage

The State's cell phone expert reviewed the level of activity on the appellant's Xbox console for the period beginning March 3, 2010, and ending May 3, 2010. Records showed that the appellant played video games daily and for fairly long, established periods of time. 7 RR 78.

However, the level of activity around the date of Julie's disappearance differed significantly from the appellant's usual usage. During the period beginning on March 20 and ending on March 30, the day of her disappearance (Friday, March 26) was the only day when there was no gaming activity on the appellant's Xbox. 7 RR 151; *see* State's Exh. 145, PPT page 109.

Beginning on that Friday at 8:23 p.m. and ended at 1:03 a.m. the following Saturday morning, the appellant left the Xbox machine in dashboard mode.¹⁴ That was an unusually long period of time, which the expert described as “[h]ighly unusual and very uncharacteristic.” That 4 hour and 40 minute period was the longest dashboard time for the period reviewed. 7 RR 79. The next longest periods of dashboard time were 1 hour and 53 minutes (on March 19) and 1 hour and 50 minutes (on March 25). *Id.* at 80.

Also uncharacteristic was the fact that the appellant had no gaming activity on his Xbox from 11:45 p.m. on the preceding Thursday, March 25, through 8:23 p.m. that Friday (i.e., the time when the long period of dashboard time began). The expert concluded, “This is uncharacteristic of his gaming activity to be off the device for 20 hours and 38 minutes of no gaming and is the only one of two days that there is an extended period of no gaming, and the other day is 4-16-2010.” 7 RR 80. As the State’s expert concluded, “[I]t’s like somebody was too busy doing something to go play Xbox.” *Id.* at 152. As was pointed out above, the date of this uncharacteristic activity was the day when Julie disappeared and also the day when it appears that the appellant used Julie’s cell phone, over an extended period of time, to go online and to send deceptive text messages as to her whereabouts.

¹⁴ “Dashboard mode” is a type of “standby mode” in which the machine is on but not accessing any games. 7 RR 181.

28. Scratches on the appellant's face on Saturday night

On the night of Saturday, March 27, 2010, Julie's cousin Michael Soto went to the appellant's home. Michael testified, "I was honestly there to take his life because I knew he did something" in connection with Julie's disappearance. 3 RR 32. The appellant and other people were in the backyard. *Id.* at 30. Upset that Julie was missing, Michael threatened the appellant and told him to come to Michael. The appellant was hesitant about approaching Michael. *Id.* at 32, 60. The appellant remained in the shadows; he would not come out of the dark and join Michael in the area illuminated by a security light. *Id.* at 59. The appellant did, however, get close enough for Michael to get a good look at his face. *Id.* Michael observed that the appellant had scratches "on both sides of the bridge of his nose and kind of near his eyes." 3 RR 32. The appellant walked away after that conversation, and Michael left the scene. *Id.* at 33. Michael later told police about the scratches on the appellant's face. *Id.* at 60.

The appellant's sister, Liliana Delacruz, also noticed the scratches on the appellant's face that night. 3 RR 208.

29. The appellant's deceptive 911 call on Saturday night

At around 9:00 p.m. on Saturday, March 27, 2010—the day after Julie disappeared, the day after the digging was done in the appellant's back yard, and the day after he began using phone and her bank card—the appellant and his

mother called 911 to report that Julie was supposed to have picked up L.D. on Friday but had not done so. 4 RR 76-81. The appellant indicated during the call that he was calling because he did not want to get in trouble for violating a court order. *Id.* at 85.

Referring to Julie, the appellant told the 911 call-taker, “She wrote a blog on her Myspace” on Friday stating that she was running away, leaving behind Austin, and was away with the one that she loves. The appellant said that, around 3:00 on Saturday, Julie “posted up, saying that she was heartbroken and she doesn’t know what to do.” State’s Exh. 27 at 14:47 – 15:40; *see* 4 RR 83.

During that 911 call, the appellant indicated that Julie was initially supposed to pick up L.D. on Thursday and that the appellant and Julie had made an arrangement whereby he could keep L.D. for one more night and Julie would pick her up on Friday morning. The appellant told the 911 call-taker that, when Julie showed up at his house on Friday (at as late as 11:00), Julie asked him “to take care of [L.D.] this weekend.” He told the call-taker that Julie told him that she was busy and that she would rather that L.D. be with her dad than be with someone else. The appellant reported that he agreed to take care of L.D. and that Julie told him that she would let him know when she would pick up L.D. He indicated that Julie never let him know what day exactly she was going to pick up L.D. and that

he was waiting for a call from Julie. He also stated that Julie had been harassing him. State's Exh. 27 at 14:55 – 17:27; *see* 4 RR 83-85.

30. The grave-sized trench discovered Monday morning

As was pointed out above, there were two sheds in the appellant's back yard, and the jury received evidence that, on the morning of Julie's disappearance, some digging had been done behind the playhouse (i.e., the smaller shed) with a shovel and/or another tool. Suspicious activity also occurred in relation the larger shed.

After spotting Julie's car parked in the parking lot of the Walgreen's store near the appellant's house on Sunday, March 28, Dora Soto and other relatives stayed with the car until the following Monday morning. 3 RR 257. Officers returned to that location at the request Dora and her family members that Monday morning.

When the officers departed from the Walgreen's that morning, they went to the appellant's home to speak with him.¹⁵ 4 RR 127. With the appellant's permission, the officers checked the interior of the house and both sheds. They did not find Julie. *Id.* at 130.

¹⁵ When question by police that day, the appellant stated that the last time he saw Julie was around 10:30 or 11:00 a.m. on the previous Friday. He mentioned to the police that Julie "was acting weird." 4 RR 128. The appellant told police that Julie asked him if he would keep [L.D.] for the weekend because she had some things to take care of and would not tell him what those things were. 4 RR 130.

What police did discover, however, was that somebody had dug a trench under the larger shed. The floor almost gave way when one of the officers stepped into the shed. Referring to the plywood flooring in the shed, one of the officers testified, “The larger shed on the right had a large plank cut out in the middle of it. It was freshly cut. There was sawdust. We lifted that and looked underneath, and there was a trench dug into the dirt underneath the shed that looked recently dug.” The officer saw “fresh sawdust.” 4 RR 131. By lifting the plank, the officer could see only a portion of the trench, which extended further under the floor.

One of the officers who saw the trench that morning—which was only three days after Julie disappeared—testified that it “looked very out of place” and “suspicious.” *Id.* at 132, 150. When asked about the trench, the appellant told the officer “that someone else dug it for plumbing when they were going to turn it into an apartment.” *Id.* at 132; *see id.* at 133.

But according to the testimony of the appellant’s mother, the appellant was lying when he stated that the trench had been dug for plumbing purposes.¹⁶ 5 RR 199; *see* 4 RR 161. In fact, when the trench was discovered by police on that Monday, March 29, the appellant’s mother (who was the primary resident of the

¹⁶ According to testimony provided by the appellant’s mother at trial, the two sheds were placed in the yard by her ex-husband in or before 2006. 5 RR 166. The trench under the shed was not there when the appellant’s family moved into the house. 5 RR 195.

house) was completely unaware of its existence. As is explained below, she did not learn of the trench until weeks later.

The officer who spoke with the appellant about the trench also saw fingernail scratches on the appellant's nose, just as Michael Soto and the appellant's sister had seen scratches there the previous Saturday night. However, the officer assumed that the scratches had been caused by a child and dismissed the presence of the scratches as insignificant. 4 RR 139.

The officers who saw those scratches and discovered the recently-dug trench were at the appellant's home in connection with a call regarding a missing person. Had they been there in relation to a murder investigation, their actions would have been different. 4 RR 160-61. Their investigation would likewise have taken a different course if they had known that the appellant was lying when he stated that the trench had been dug for plumbing purposes. *Id.* at 161. Had the officers known, at the time of their encounter with the appellant, that foul play had been involved, they would have done something more. *Id.* at 162.

31. His mother's reaction to the trench and the pile of dirt

On May 4, 2010, the appellant's brother in law was in the appellant's back yard, smoking a cigarette, and happened to notice that the door to the larger shed was open and that it had fresh sawdust around it. 5 RR 226-27. He saw the hole in

the ground under the shed and observed that it was “a fairly fresh trench.” *Id.* at 227; 6 RR 91. It was “moist... [a]s in recently dug.” 5 RR 230.

The brother in law alerted the appellant’s mother, who then saw the trench for the first time. *Id.* at 192, 227, 237. According to the brother in law, the appellant’s mother did not know anything about the trench or the cut plywood prior to that time. *Id.* at 197; 6 RR 97-98.

The appellant’s mother was so concerned about what her the appellant might have been involved in that she called the police to come out and investigate. 5 RR 237. Asked about the demeanor of the appellant’s mother, the brother in law testified, “Well, she was concerned that her son might be involved in some kind of incident. It seemed fishy. And, to be honest, I would have raised a suspicion too if something was going on.” *Id.* at 229. “She was concerned that her son had done something.” *Id.*

Specifically, the appellant’s mother made contact with Detective Scott of the Missing Person’s Unit. 5 RR 8; 6 RR 91. According to another detective, the appellant’s mother “relayed to [Detective Scott] that she went into the hole and started digging and then became scared. And he described it as kind of a frantic, frenzied phone call where she was asking us to come out and look in the hole ourselves and see what we would find.” 6 RR 91. The appellant’s mother was scared and anxious, so much so that the police even called an ambulance. *Id.* at 92.

When police arrived at the scene, she stayed inside and told them, “It’s out there.”

Id. at 93.

Upon entering the shed, police saw “an enormous cutout of the flooring.” 6 RR 94. The trench was about five feet long, two feet wide, and a foot and a half deep. 5 RR 149. Because the soil was somewhat rocky, digging the hole would have entailed “[s]ome hard digging.” *Id.* A large pry bar, used to break rocks and other items, was found nearby.¹⁷ 5 RR 150. According to a crime scene tech, it did not “look like somebody was putting any plumbing or anything down under that flooring.” *Id.* at 150. Also inside of the shed were several live .22 caliber bullets.¹⁸ 6 RR 94, 101. The lead homicide investigator testified that the trench was consistent with something that a murder victim could have been buried and hidden in. *Id.* at 304.

When she spoke with the police about the trench on May 4, the appellant’s mother specifically asked detectives to look at a mound of dirt that was behind the shed and covered by other items. 6 RR 98. Those items had previously been behind the shed, but the mound of dirt under those items had not been there. According to a detective, “somebody had to have moved the items from behind the

¹⁷ AT&T, which repaired the damaged telephone cable located behind the smaller shed (“the playhouse”), had nothing to do with the trench that was discovered under the larger shed. 6 RR 124.

¹⁸ Additional bullets were found in the appellant’s room when the house was subsequently searched by police pursuant to a warrant. *Id.* at 307.

shed, moved the dirt from underneath the shed out the door back around to the back of the shed, deposit the dirt, and then put the items back on top.” *Id.* at 98.

While investigating the back yard that day, police also found a small area on the ground that had ashes and burned debris. The debris included burned clothing items, one of which appeared to be a purple shoelace that might have been a drawstring for an item of clothing. 6 RR 95. According to a detective, “It could possibly have been a drawstring for a hoodie or a sweater or the waistband of sweatpants or something like that, but it was obvious that it was some sort of shoelace type of clothing.” *Id.* at 95. Also in the backyard was a picnic table, under which police found a knife and some latex gloves. *Id.* at 95-96.

32. The appellant “duped” the missing-persons detective

Detective James Scott, the investigator from the Missing Person’s Unit, interviewed the appellant in person on April 6, 2010. 5 RR 29; State’s Exhs. 58 (video) and 63 (transcript). He interviewed the appellant a second time on April 28, 2010. 5 RR 29; *see* State’s Exhs. 59 (video) and 64 (transcript). The appellant was not yet considered a suspect (5 RR 29-30), and the case was not yet being investigated as a homicide.¹⁹ 3 RR 80-82.

¹⁹ People who are suspects are interviewed differently than people who are merely witnesses. 5 RR 30.

During those interviews, the appellant made multiple deceptive statements. After those interviews were conducted and the investigation progressed, Detective Scott realized that the appellant was “[h]iding information” from him. Acknowledging that he had underestimated the appellant, the detective testified, “I -- personally, I was duped.” 5 RR 61; *see id.* at 62. During the first interview, the appellant talked about the events of Friday, March 26. He said that Julie showed up at around 10:30 or 11:00 that day. State’s Exh. 63 at 3. He said that Julie “comes in on a very weird-looking way, like I said I haven’t ever seen her that way. She looked down. My first instinct was probably she was on drugs....” *Id.* The appellant stated that Julie asked him on Friday to keep L.D. until Julie picked her up that weekend. *Id.* at 7. The appellant claimed that Julie told him, “... I just want you to have her because you do that and it’s better off with you than with someone else.” State’s Exh. 63 at 7; *see id.* at 53. He said that he asked Julie to specify the date when she would pick up L.D. and that Julie just said, “Well, I’ll let you know.”²⁰ *Id.* at 8.

These claims by the appellant were contradicted by evidence that Julie had serious misgivings about leaving L.D. with the appellant (3 RR 224-25, 274) and evidence that she planned to pick up L.D. (not leave the child with the appellant)

²⁰ The appellant made similar statements during an earlier phone conversation with Detective Scott. 5 RR 26.

on that particular day (3 RR 65, 107). The jury also received evidence that Julie did not use drugs. 4 RR 31.

During the first interview, the appellant also indicated that Julie “supposedly went missing [on] Saturday” and stated, “That’s when I actually started texting and all that.” State’s Exh. 63 at 11. These claims are contradicted by the appellant’s use of Julie’s bank card on Friday afternoon and by the records showing that he possessed and used her cell phone throughout the day on Friday to send deceptive messages.

During the second interview, the appellant again indicated that Saturday (not Friday) was the day when he learned that Julie was missing. State’s Exh. 64 at 40. And when asked whether he and Julie ever got into a fight, the appellant responded, “[V]erbal fights. Never physical....” State’s Exh. 64 at 28. This latter claim is likewise contradicted by other evidence. *See, e.g.*, 4 RR 14-15 (describing incidents of physical violence).

During the second interview, the appellant falsely indicated he had no internet access at home. 5 RR 57. In addition, he contradicted his own earlier statements as to when he learned about Julie’s relationship with Aaron Breau, and he falsely claimed that Detective Scott was the person who had informed the appellant about that relationship. *Id.* at 60.

In addition to those false statements, Detective Scott identified at trial several omissions by the appellant that raised red flags. The appellant failed to disclose the following information that the detective believed to be material:

- That the appellant had used Julie's credit card to make purchases at Walmart and at two different McDonald's restaurants "on the afternoon of the morning that Julie Ann Gonzalez had disappeared." 5 RR 30, 65.
- That there were the problems with the relationship between the appellant and Julie. 5 RR 30-31.
- That the appellant had been physically and verbally abusive to Julie. 5 RR 31, 43.
- That Julie often expressed concern with how he took care of L.D. 5 RR 31.
- That those concerns caused Julie to go to court and get an order permitting the appellant to have only supervised visitation of L.D. (a fact that would have raised a lot of red flags, including the "question ... about why July Ann Gonzalez would have left the most precious thing in her life with somebody she did not trust"). 5 RR 32.
- That the appellant "had basically stalked her," that he was showing up at her workplace to the extent that he had to be asked to leave, and that she once called someone at her job and reported that the appellant was following her. 5 RR 32; *id.* at 32-33.
- That he refused to sign off on the divorce petition for months but then found the time and the money to do so approximately three days after Julie disappeared. 5 RR 36, 54; *see* 3 RR 231; State's Exh. 8 at 2.

33. The appellant made deceptive statements to his neighbors

On the Monday or Tuesday after Julie disappeared, the appellant joined some of his neighbors (i.e., Karen Ozment and Jesse Corpus, Jr.) in a conversation

about Julie's disappearance. 6 RR 63. During this conversation, the appellant mentioned that someone had used her credit card. He indicated that police had shown him a video, "to observe a woman using the credit card, Julie Ann's credit card, and he said but that wasn't her." 6 RR 76. He indicated "it was a woman using the card," and he never mentioned that he himself had used Julie's card on the day that she went missing. *Id.* According to Ms. Ozment, "He specifically stated a woman." *Id.*

SUMMARY OF THE ARGUMENT

In the first ground for review, the appellant asks, "In a murder case, where there is no body, no direct evidence of a death and no direct evidence to show that petitioner acted either intentionally or knowingly in causing the alleged victim's death or acted with intent to cause serious bodily injury and committed an act clearly dangerous to human life that caused the alleged victim's death, must the State prove a 'fatal act of violence' in order to convict a person of murder?" App. Br. 49. That question need not be answered in this particular case because the record here contains evidence that the appellant engaged in conduct that can rationally be found to have been the cause of the victim's death. Because murder is a "result of conduct" offense, the *Jackson* standard of review requires nothing more in this regard.

The appellant's second and third grounds challenge the legal sufficiency of the evidence. Relying upon the fact that the victim's body was never found, the second ground asserts that the evidence is insufficient to establish that the victim was deceased and that her death was caused by the appellant. In light of the compelling circumstantial evidence, the Court should find the evidence legally sufficient.

In his fourth ground, the appellant argues that the Court of Appeals misconstrued the testimony of a State's witness to whom the appellant made incriminating statements. The Court should reject that argument because the inferences made by the Third Court were rational and supported by the evidence.

STATE'S REPLY TO THE APPELLANT'S FIRST GROUND

THE COURT NEED NOT DECIDE WHETHER THE STATE MUST PROVE A "FATAL ACT OF VIOLENCE" IN A MURDER CASE, BECAUSE THE EVIDENCE HERE IS LEGALLY SUFFICIENT TO ESTABLISH THAT THE APPELLANT'S CONDUCT CAUSED THE VICTIM'S DEATH.

Argument and Authorities

In his first ground for review, the appellant asks, "In a murder case, where there is no body, no direct evidence of a death and no direct evidence to show that petitioner acted either intentionally or knowingly in causing the alleged victim's death or acted with intent to cause serious bodily injury and committed an act clearly dangerous to human life that caused the alleged victim's death, must the

State prove a ‘fatal act of violence’ in order to convict a person of murder?”²¹

App. Br. 49.

That question need not be answered in this particular case because the record here contains evidence of conduct by the appellant that can, when viewed in the requisite light, rationally be found to have been the cause of Julie’s death.

Any post-conviction analysis of the State’s burden in a murder case should begin with the settled conclusion that “*Jackson* is the only constitutional standard of review for assessing the legal sufficiency of evidence in a criminal case.” *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013); *see Jackson v. Virginia*, 443 U.S. 307 (1979). Under the *Jackson* standard, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319 (emphasis in original).

For purposes of a legal-sufficiency analysis, the elements of an offense are defined by reference to a hypothetically correct jury charge. *Anderson v. State*, 416 S.W.3d 884, 889 (Tex. Crim. App. 2013); *Malik v. State*, 953 S.W.2d 234, 240

²¹ The terminology used by the appellant appears to derive from the unpublished opinion of the Third Court in *Nisbett*; the phrase “fatal act of violence” does not appear anywhere else in Texas jurisprudence. *See Nisbett v. State*, No. 03-14-00402-CR, 2016 Tex. App. LEXIS 13252, at *34 (Tex. App.—Austin Dec. 15, 2016) (not designated for publication) (reasoning, for example, that “[t]his testimony does not demonstrate a fatal act of violence perpetrated against Vicki on the day she disappeared”).

(Tex. Crim. App. 1997). Such a charge is “one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State’s burden of proof or unnecessarily restrict the State’s theories of liability, and adequately describes the particular offense for which the defendant was tried.” *Malik*, 953 S.W.2d at 240.

The phrase “the law [as] authorized by the indictment” means “the statutory elements of the offense . . . as modified by the charging instrument.” *Curry v. State*, 30 S.W.3d 394, 404 (Tex. Crim. App. 2000). The penal provisions at issue in the instant case are subsections (b)(1) and (b)(2) of Texas Penal Code section 19.02. The two “counts” of the indictment tracked that statutory language.²² Specifically, Count I alleged, *inter alia*, that the appellant “intentionally or knowingly cause[d] the death of an individual, to wit, Julie Ann Gonzalez, by a manner and means unknown to the Grand Jury....” CR 7; *see* Tex. Penal Code § 19.02(b)(1). Count II alleged, *inter alia*, that the appellant, “with intent to cause serious bodily injury to an individual, to wit, Julie Ann Gonzalez, commit[ted] an act clearly dangerous to human life that caused the death of the said Julie Ann Gonzalez by a manner and means unknown to the Grand Jury....” CR 7-8; *see*

²² Alleging statutory alternative manners or means, the two allegations of the indictment are labelled as “counts” but are more accurately characterized as “paragraphs.” *See Renfro v. State*, 827 S.W.2d 532, 535 (Tex. App.—Houston [1st Dist.] 1992, pet. ref’d); *see also* Tex. Code Crim. Proc. art. 21.24 (a), (b). However, “[t]he substance of the allegation determines its character as a ‘count’ or ‘paragraph,’ not the terminology used.” *Dalton v. State*, 898 S.W.2d 424, 426 (Tex. App.—Fort Worth 1995).

Tex. Penal Code § 19.02(b)(2). In this case, a hypothetically correct jury charge would authorize a murder conviction if either allegation was proved beyond a reasonable doubt.

In cases like the present one, where the manner and means are unknown to the grand jury, the indictment may properly allege that fact. And where, as here, the manner and means remain unknown at the conclusion of the evidence at trial, an instruction on unknown manner and means is properly submitted to the jury.²³

Moulton v. State, 395 S.W.3d 804, 810 (Tex. Crim. App. 2013); *see* CR 140. For purposes of performing a legal-sufficiency analysis in such a case, “[i]t is immaterial that the exact cause of death could not be determined.” *Scott v. State*, 732 S.W.2d 354, 359 (Tex. Crim. App. 1987).

Implicit in section 19.02 is a requirement that the victim’s death be caused by the defendant’s “conduct.” Tex. Penal Code § 6.01(a) (“A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession”). However, “murder is a ‘result of conduct’ offense because it punishes the intentional killing of another regardless of the specific manner (e.g., shooting, stabbing, suffocating) of causing the person's death.” *Young v. State*, 341 S.W.3d 417, 423 (Tex. Crim. App. 2011) (citing *Schroeder v. State*, 123 S.W.3d

²³ The appellant does not challenge to the sufficiency of the evidence to prove that the offense was committed (if at all) “by a manner and means unknown to the Grand Jury.” CR 7, 8.

398, 400 (Tex. Crim. App. 2003)). The statute proscribing murder, “like ... other assaultive proscriptions, does not specify the ‘nature of conduct.’ **Clearly then, the ‘nature of conduct’ in these offenses is inconsequential (so long as it includes a voluntary act) to commission of the crimes.** What matters is that the conduct (whatever it may be) is done with the required culpability to effect the *result* the Legislature has specified.” *Alvarado v. State*, 704 S.W.2d 36, 39 (Tex. Crim. App. 1985) (italics in original, other emphasis added); *see* Tex. Penal Code § 19.02(b)(1), (2).

By finding that a defendant “*intentionally or knowingly cause[d]* the death of an individual,” a jury implicitly determines that the defendant committed a voluntary act. Tex. Penal Code § 19.02(b)(1) (emphasis added). Such a determination is likewise implicit in a jury’s finding that the defendant “*intended to cause serious bodily injury and commit[ted] an act* clearly dangerous to human life that causes the death of an individual.” *Id.*, § 19.02(b)(2) (emphasis added).

Thus, the hypothetically correct charge for this case would specify only “the statutory elements of the offense . . . as modified by the charging instrument.” *Curry*, 30 S.W.3d at 404. It would *not* include—in addition to those elements—a separate reference to a “fatal act of violence.” App. Br. 49.

The absence of such a reference should not give rise to any double-jeopardy or jury-unanimity concerns. The reason for this is that “each victim is an allowable

unit of prosecution for the offense of murder.” *Johnson v. State*, 364 S.W.3d 292, 295 (Tex. Crim. App. 2012); *see id.* at 298 (“What caused the victim's death is not the focus or gravamen of the offense; the focus or gravamen of the offense is that the victim was killed.”). In *Johnson*, the Court concluded that “variances involving immaterial non-statutory allegations do not render the evidence legally insufficient” (*id.* at 299) and provided the following example:

So, the murder of one individual is a different offense from the murder of a different individual. But some types of facts—such as the method by which a murder is committed—do not relate at all to the allowable unit of prosecution. The State could allege “poisoning, garroting, shooting, stabbing, or drowning,” of a single individual, and those different acts would simply be alternate methods of committing a single offense. With only one victim, there can be only one murder, regardless of how that murder is committed.

Johnson, 364 S.W.3d 292, 296.

A variance from an allegation of such alternative “brute facts” (*id.* at 296) “can never be material because such a variance can never show an ‘entirely different offense’ than what was alleged” (*id.* at 298). “[A] hypothetically correct charge need not incorporate allegations that give rise to immaterial variances.” *Id.* at 294 (quoting *Gollihar v. State*, 46 S.W.3d 243, 256 (Tex. Crim. App. 2001)); *see, e.g., Zuniga v. State*, 393 S.W.3d 404, 411, 413 (Tex. App.—San Antonio 2012, pet. ref’d) (in case where cause and manner of death could not be determined by medical examiner, the appellate court rejected appellant’s variance claim and

found the evidence legally sufficient, reasoning, *inter alia*, “[b]ecause the act that caused April’s death does not define or help define the allowable unit of prosecution for this type of offense, the alleged variance cannot be material.”). *See also Sanchez v. State*, 376 S.W.3d 767, 773 (Tex. Crim. App. 2012) (op. on reh’g) (stating that “[n]either the manner (the *actus reas*) nor the means (the ‘instrument of death’) need to be agreed upon unanimously by a jury”).

If a court reviewing a murder conviction required proof of a particular “fatal act of violence”—*in addition to* proof that the victim’s death resulted from the defendant’s voluntary conduct, “whatever it may be” (*Alvarado* at 39)—then that court would, in effect, predicate its sufficiency analysis upon a jury charge that is no longer “hypothetically correct.” The reason for this is that a charge requiring a “fatal act of violence” would include—as “an essential element” (*Jackson*, 443 U.S. at 319)—a factual issue that does not appear in the murder statute or elsewhere in the Penal Code. This would be contrary to the intent of the Legislature in enacting section 19.02 and would also unnecessarily increase the State’s burden. The use of such a charge is not permissible. *See Malik*, 953 S.W.2d at 240.

The appellant argues that the Third Court misapplied the *Jackson* standard. App. Br. 51. He reasons, *inter alia*, that “Texas courts have required proof of a ‘fatal act of violence’ committed by the defendant before a murder conviction will

be upheld.” *Id.* at 53. As support for that proposition, the appellant relies upon these cases: *Hacker v. State*, 389 S.W.3d 860, 870-871 (Tex. Crim. App. 2013); *Stobaugh v. State*, 421 S.W.3d 787 (Tex. App.—Ft. Worth 2014, pet. ref.); *Nisbett v. State*, No. 03-14-00402-CR, 2016 Tex. App. LEXIS 13252 (Tex. App.—Austin 2016, pet. granted) (not designated for publication); and *Walker v. State*, No. PD-1429-14, 2016 Tex. Crim. App. Unpub. LEXIS 973 (Tex. Crim. App. October 19, 2016) (not designated for publication).²⁴

The crux of the appellant’s argument is that the evidence is legally insufficient in cases where “there were no facts in the record to prove that [the defendant] committed any specific act directed at the alleged victim.” *Id.* at 54. But therein lies the distinction between this case and those cited by the appellant. Unlike those other cases, the record in the instant case *does* include evidence that the appellant committed a specific act directed at the victim. Here, the jury received testimony from Justin Stewart regarding an incident in which the appellant, by his own admission, tried to stop Julie from leaving and left her “unconscious.” 7 RR 34.

Stewart’s testimony supports a rational inference that the appellant’s altercation with Julie consisted of two distinct assaults. As for the first assault,

²⁴ The *Walker* opinion has no precedential value. See Tex. R. App. P. 77.3 (“Unpublished opinions have no precedential value and must not be cited as authority by counsel or by a court”).

Stewart’s testimony indicates that the appellant “wrestl[ed] around with” (7 RR 15) and “assaulted Julie” (*id.* at 35), that they fell, that she hit her head and bled, and that then “Julie she told him she was not going to let him see [L.D.] again and that he was going to jail” (*id.*).

Regarding the appellant’s second assault on Julie, which Stewart characterized as “apparently the second time around,” the record supports an inference that, when the appellant “tried to stop her” from leaving (*id.* at 15), he “freaked out” (*id.* at 16) and “knocked [her] out” (*id.*), causing her to be “unconscious at the end of their struggle” (*id.* at 34).

Viewed in the light most favorable to the verdict, and also in light of all of the other evidence (some of which, including a death threat, is addressed in greater detail in the sections below), the jury could rationally have concluded that the conduct by which the appellant knocked Julie unconscious was an intentional act, clearly dangerous to life, that caused her death.²⁵

Thus, this case is more akin to *McDuff*, a case where the victim’s body was never found and where there was no direct evidence of her death. *See McDuff v. State*, 939 S.W.2d 607 (Tex. Crim. App. 1997). In that capital murder case, an accomplice testified, *inter alia*, that McDuff, during the course of raping the victim, “slapped the complainant real hard and said something about killing her,

²⁵ The Statement of Facts section of this brief is incorporated herein by this reference.

and that after the slap she fell back and bounced on the ground.” *Id.* at 611. The accomplice also “indicated that the slap sounded something like a crack, a tree limb or something breaking, but did not think that it broke her neck.” *Id.* In addition, “[a] forensic pathologist testified that a blow from the hand of a person of some size delivered to the head of a person five-foot three-inches tall and weighing one-hundred fifteen pounds which sounded like a tree limb breaking, which resulted in the recipient of the blow being knocked back and bouncing off the ground and being carried limp with legs and feet dangling, indicates that something major has broken with the limpness indicating that there was probably spinal cord damage as well; and not appropriately responding to cigarette burns thereafter further indicates neurological pathway damage without possible recovery such that life is going to be lost very quickly.” *Id.* at 615.

Relying primarily upon that testimony, the Court found the evidence sufficient to establish the *corpus delecti* of murder and legally sufficient to support McDuff’s conviction. *Id.* Like the evidence in *McDuff*, the evidence in the instant case included evidence of an assault on the victim that could rationally be found to have been the cause of her death. This Court should reject the appellant’s first ground.

STATE’S REPLY TO THE SECOND AND THIRD GROUNDS

THE EVIDENCE IS LEGALLY SUFFICIENT TO ESTABLISH THAT THE VICTIM WAS DECEASED AND THAT THE APPELLANT CAUSED HER DEATH.

Argument and Authorities

The appellant’s second and third grounds challenge the legal sufficiency of the evidence. In particular, the second ground asserts that the evidence is insufficient to establish that Julie Ann Gonzalez was deceased and that her death was caused by the appellant. App. Br. 49. The Court should reject both assertions.

1. Standard governing appellate review

When applying the *Jackson* standard, the task of the appellate court is to “determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict.” *Hooper v. State*, 214 S.W.3d 9, 16-17 (Tex. Crim. App. 2007). It is unnecessary for every fact to point directly and independently to the guilt of the accused; it is enough if the finding of guilt is warranted by the cumulative force of all of the incriminating evidence. *Id.* at 13.

The jury is the exclusive judge of the facts proved, the weight to be given to the testimony, and the credibility of the witnesses. Tex. Code Crim. Proc. art. 38.04; *Alvarado v. State*, 912 S.W.2d 199, 207 (Tex. Crim. App. 1995). The jury is free to accept or reject any or all of the evidence presented by either party.

Saxton v. State, 804 S.W.2d 910, 914 (Tex. Crim. App. 1991). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004).

Juries are permitted to draw multiple reasonable inferences from facts so long as each is supported by the evidence presented at trial. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013); *see Hooper v. State*, 214 S.W.3d 9, 17 (Tex. Crim. App. 2007) (“inference stacking” is not prohibited). The appellate court is required to presume that the factfinder resolved any conflicting inferences in favor of the prosecution and defer to that resolution. *Jackson*, 443 U.S. at 326; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Under the *Jackson* standard, the reviewing court is not to position itself as a thirteenth juror in assessing the evidence. Rather, it is to position itself as a final due-process safeguard that ensures only the rationality of the factfinder. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988).

2. The appellant’s confession should be considered during the sufficiency review

The appellant’s brief makes two very brief references to “[t]he *corpus delecti* of the offense of murder.” App. Br. 51-52; *see id.* at 62. However, no *corpus delecti* analysis is warranted here.

a. The *corpus delicti* rule

The *corpus delicti* rule is a common-law, judicially created doctrine that has been described as follows:

The *corpus delicti* rule is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession. The rule states that, “[w]hen the burden of proof is ‘beyond a reasonable doubt,’ a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the *corpus delicti*.” To satisfy the *corpus delicti* rule, there must be “evidence independent of a defendant's extrajudicial confession show[ing] that the ‘essential nature’ of the charged crime was committed by someone.”

Miller v. State, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015) (quoting *Hacker v. State*, 389 S.W.3d 860, 865, 866 (Tex. Crim. App. 2013)). Under this rule, where applicable, “no criminal conviction can be based upon a defendant's extrajudicial confession unless the confession is corroborated by independent evidence tending to establish the *corpus delicti*.” *Fisher v. State*, 851 S.W.2d 298, 302 (Tex. Crim. App. 1993); see *Carrizales v. State*, 414 S.W.3d 737, 741 (Tex. Crim. App. 2013).

In *Carrizales*, the Court made it clear that this rule does not apply in all cases: “the common-law *corpus-delicti* rule exists, in the post *Jackson v. Virginia* era, only in confession cases.” *Carrizales*, 414 S.W.3d at 739. In non-confession cases, “proof of the *corpus delicti* ... is wholly subsumed by the *Jackson* elements test.” *Id.* at 744. Thus, in cases without confessions, “[t]he State d[oes] not have to prove any *corpus delicti*, it ha[s] to prove every element of the ... offense

beyond a reasonable doubt.” *Id.* at 744. “If the State proves each element beyond a reasonable doubt, there is no doubt that the crime has been committed by someone, namely the defendant.” *Id.* In such a case, “there is neither need nor purpose to refer to the *corpus-delicti* doctrine.” *Id.*

Before *Carrizales*, appellate courts sometimes employed the “*corpus delicti*” language in non-confession cases. *See, e.g., Carrizales*, 414 S.W.3d 737, 743 (“It appears that we mistakenly applied the *corpus-delicti* rule in *Bussey*, a case that did not involve an extrajudicial confession, and we thereby confused the bench and bar”). At the present time, however, any use of that terminology in a *Jackson* sufficiency review of a non-confession case “is, at best, just short hand for ‘evidence that the crime has been committed,’ and, at worst, confusing.” *Id.*

The upshot of *Carrizales* is that it is now clear that the *corpus delicti* rule is a stand-alone rule that is separate and apart from the *Jackson* standard. A *corpus delicti* analysis is not a proxy for a *Jackson* sufficiency review and must not be used in lieu of such a review. Instead, a *corpus-delicti* analysis may properly be performed only for the limited purpose of determining whether an extrajudicial confession may be considered during a legal-sufficiency review.

b. Any claim based upon the *corpus delicti* rule is inadequately briefed

When the appellant makes those two references in his brief to “[t]he *corpus*

delecti of the offense” (App. Br. 51-52; *see also* App. Br. 62), he does so only in an attempt to support his claim that the evidence is legally insufficient under *Jackson*. He appears to use that phrase in a way that one might refer to a similar concept, i.e., the *actus reas* of an offense. *See* Black’s Law Dictionary at 369 (8th ed. 2004) (defining “*corpus delicti*” as “[t]he fact of a transgression; ACTUS REAS”);

Importantly, what the appellant does *not* do is invoke the *corpus delecti* rule that relates to confessions. *See id.* (defining “*corpus delicti* rule” as “[t]he doctrine that prohibits a prosecutor from proving the *corpus delecti* based solely on a defendant’s extrajudicial statements”). He has never claimed, in documents filed with this Court or with the Third Court, that his confession to Justin Stewart was not sufficiently corroborated by other evidence or that the remaining evidence is insufficient to prove the *corpus delecti*. The term “*corpus delecti*” did not appear anywhere in the appellant’s brief on direct appeal. More to the point, that brief made absolutely no reference, express or implied, to the *corpus delecti* rule. The Third Court properly did not apply the *corpus delecti* rule in relation to the appellant’s confession. And the brief filed by the appellant with this Court likewise makes no express or implicit reference to that rule.

In short, the appellant’s challenge to the sufficiency of the evidence to prove *actus reas* simply does not raise the issue of whether his confession was sufficiently corroborated. Any claim involving the *corpus delecti* rule is

inadequately briefed and should be rejected. *See* Tex. R. App. P. 38.1(i); *Hankins v. State*, 132 S.W.3d 380, 385 (Tex. Crim. App. 2004); *Wyatt v. State*, 23 S.W.3d 18, 23 (Tex. Crim. App. 2000). The Court should apply the *Jackson* standard alone, as is done in other cases where the *corpus delicti* rule does not apply (such as cases that do not involve extrajudicial confessions). “*Jackson* is the only constitutional standard of review for assessing the legal sufficiency of evidence in a criminal case.” *Carrizales*, 414 S.W.3d 737, 742.

c. The confession is corroborated by other evidence

If the Court does find it necessary to perform a separate analysis under the *corpus delicti* rule, the Court should conclude that the appellant’s confession to Justin Stewart is sufficiently corroborated.

Under the *corpus delicti* rule, the task of an appellate court is to consider all the record evidence, other than the appellant's extrajudicial confession, in the light most favorable to the jury’s verdict and to determine whether that evidence tended to establish that the alleged victim was actually murdered by someone. The court need not concern itself with the fact that the body of the alleged victim was not recovered, because production and identification of the victim's body is not part of the *corpus delicti* of murder. *McDuff v. State*, 939 S.W.2d 607, 614; *Fisher*, 851 S.W.2d 298, 303.

“If there is *some* evidence corroborating the confession, the confession may be used to aid in the establishment of the *corpus delicti*.” *Jackson v. State*, 652 S.W.2d 415, 419 (Tex. Crim. App. 1983) (emphasis added); *see Salazar v. State*, 86 S.W.3d 640, 645 (Tex. Crim. App. 2002). Importantly, “[t]he rule does not require that the independent evidence *fully* prove the *corpus delicti*, only that it *tend* to prove the *corpus delicti*.” *Fisher*, 851 S.W.2d at 302-03 (emphasis added). In other words, “‘all that is required is that there be some evidence which renders the commission of the offense more probable than it would be without the evidence.’” *Cardenas v. State*, 30 S.W.3d 384, 390 (Tex. Crim. App. 2000); quoting *Chambers v. State*, 866 S.W.2d 9, 15-16 (Tex. Crim. App. 1993), cert. denied, 511 U.S. 1100, 128 L. Ed. 2d 491, 114 S. Ct. 1871 (1994). The *corpus delicti* may be proved by circumstantial as well as direct evidence. *Harris v. State*, 738 S.W.2d 207, 220 (Tex. Crim. App. 1986).

In the instant case, the jury received “some evidence” tending to prove that Julie was murdered by someone.²⁶ *Jackson*, 652 S.W.2d at 419. That evidence includes the testimony of investigators that, despite their efforts to locate Julie, they found no indication that she was alive. *See* 7 RR 220-36. In addition, Julie’s friends, relatives, and the police were unable to identify any alternative explanation for her inexplicable, uncharacteristic disappearance. Before she vanished, “Julie

²⁶ The Statement of Facts section of this brief is incorporated herein by this reference.

was always on the grid, so to speak.” 3 RR 249.

Other evidence—probative of the *corpus delecti* and also probative of the appellant’s guilt as the perpetrator—includes the evidence of his behavior around the time of Julie’s disappearance. On the very morning of Julie’s disappearance, the phone company received reports of an outage, a disruption that was caused that morning by the act of digging behind the playhouse in the appellant’s back yard. By the time a service technician checked the site of the disruption on the following Monday, that site had been covered up by a woodpile. 6 RR 125-26.

On that same Monday, officers stumbled upon evidence of additional surreptitious digging in the appellant’s back yard. A fresh, grave-sized trench found under the large shed in the appellant’s yard was, according the lead homicide investigator,” consistent with something that a person who had been killed could have been buried and hidden in.” 6 RR 304. Police also found ashes and burned debris on the ground. The debris was from items of burned clothing, one of which was a purple shoelace that appeared to be a drawstring for an item of clothing. 6 RR 95.

It is significant that, after the appellant’s mother learned of the trench, she made a frightened and frantic call to the Missing Persons detective who was handling the investigation of Julie’s disappearance. 6 RR 91-93. Viewed in the requisite light and considered in conjunction with all of the other evidence, the

mother's phone call suggests that she suspected a connection between the trench, the pile of dirt hidden behind the shed, and the disappearance of Julie. In light of the mother's own exploration of the trench, her physical reaction to its discovery, her phone call to that particular detective, and her act of directing detectives to the obscured pile of dirt, there should be little question that she believed that Julie was buried there.

When the homicide investigation got underway and police searched the appellant's residence, cadaver dogs alerted on items outside of the shed where the grave-sized trench was found. 5 RR 155; 6 RR 299-300. Investigators found, among other things inside of the house, a torn-up photo of Julie Ann that had been taped back together. 5 RR 111.

Also probative is evidence that the appellant possessed and used, on the day of her disappearance, Julie's bank card and her all-important cell phone. Probative too is the manner in which the appellant used that phone, sending deceptive messages to Julie's relatives and friends. That conduct is especially significant because many of those communications provided false information regarding the very cause of her disappearance. The appellant even "duped" and withheld material information from the police. 5 RR 61. In short, the record here is replete with evidence reflecting the appellant's consciousness of guilt, which "is perhaps one of the strongest kinds of evidence of guilt." *Torres v. State*, 794 S.W.2d 596,

598 (Tex. App.—Austin 1990); *see also Wells v. State*, 578 S.W.2d 118, 119 (Tex. Crim. App. 1979) (recognizing that attempts to conceal incriminating evidence are indicative of guilt).

Justin Stewart’s testimony about the appellant’s assault on Julie also has probative value here. Stewart did not specify the timeframe during which that incident occurred. However, the other evidence presented at trial supports an inference that the altercation, and Julie’s death, occurred around the time of her disappearance. On the Saturday evening following the Friday on which Julie Ann disappeared, the appellant was observed by two different people to have scratches on his face. 3 RR 32, 59-60, 208. The record supports an inference that the scratches were inflicted upon the appellant by a person. *See id.* (testimony by detective that he assumed that the appellant was scratched by L.D.). The scratches were “on both sides of the bridge of his nose and kind of near his eyes.” *Id.* at 32. The scratches were also noticed by a detective on the following Monday. 4 RR 139.

Those scratches arguably take on additional significance in light of the appellant’s behavior that Saturday evening. When confronted by Julie’s cousin, Michael Soto—*about Julie’s disappearance*—the appellant refused to step into the light. Michael still managed to see those scratches. Michael testified, “He wouldn’t come out of the dark. The way it was, one side was lit up by security

light; one side shaded, like, on the corner of the house. He wouldn't come where the security light was, where I was. He was in the shadows." 3 RR 59. In addition to the scratches, Michael found the appellant's speech and body movements to be suspicious. *Id.* at 57.

Also probative of the *corpus delecti* is evidence of Julie's fear that she would be murdered. Julie expressly told her store manager, "I fear for my life." 3 RR 76. Days before she disappeared, Julie told her sister "that she had a bad feeling, and she kept on saying that over and over." 4 RR 21. The appellant had a history of stalking Julie Ann and engaging in violent behavior toward her. *See, e.g.,* 3 RR 76-77, 264; 4 RR 14. In fact, he actually told Julie that, if he could not have her or their daughter, then "nobody will." 3 RR 77.

That death threat seems especially significant in light of a comment that the appellant made to Justin Stewart. According to Stewart, the appellant mentioned "that after he assaulted Julie" during the first part of the altercation, "she told [the appellant] she was not going to let him see [L.D.] again and that he was going to jail." 7 RR 35. Later during the incident described by Stewart, the appellant "tried to stop her" from leaving (*id.* at 15), he "freaked out" (*id.* at 16), and he "knocked [her] out" (*id.* at 16), causing her to be "unconscious at the end of their struggle" (*id.* at 34).

Because the jury received “*some* evidence” tending to prove that Julie was murdered by someone, the appellant’s statements to Justin Stewart “may be used to aid in the establishment of the *corpus delicti*.” *Jackson*, 652 S.W.2d at 419 (emphasis added). Those statements, when coupled with all of the other evidence admitted at trial, “*tend* to prove the *corpus delicti*.” *Fisher*, 851 S.W.2d at 302-03 (emphasis added).

3. The evidence supports a rational inference of death

In a murder case, “the State is not required to produce and identify the body or remains of the decedent.” *McDuff*, 939 S.W.2d 607, 614 (citing *Fisher*, 851 S.W.2d 298, 303). In *McDuff*, this Court found the evidence legally sufficient to prove capital murder even though the victim’s body was never found. In its analysis, the Court found probative value in evidence similar to that adduced in the instant case:

[T]he complainant’s sister indicated that since the complainant had disappeared, she had not seen or heard from the complainant and there had been no activity in her bank and charge accounts that could be attributed to the her, nor was there any indication from the items remaining in her apartment that she was going on a trip. The sister was unaware of any problems that the complainant might have been going through that would possibly cause her to disappear or just walk off and leave everything. The sister also indicated that she and the complainant tried to talk on the phone once or twice a week or at least leave messages on each other’s answering machines.

Viewing this evidence and the previously discussed evidence of blood and hairs found in appellant's car in the requisite light, we conclude that there is sufficient evidence of the *corpus delicti* of murder, i.e. evidence showing the death of a human being caused by the criminal act of another. We conclude that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

McDuff, 939 S.W.2d 607, 615-16 (Tex. Crim. App. 1997).

In *Fisher*, the Court likewise found probative value in evidence of the absence of the alleged murder victim. In its legal sufficiency analysis, the court gave weight to evidence “that [the alleged victim] vanished suddenly and without a trace; that her personal affairs (receipt of mail, friendships, payment of debts, etc.) were left strangely unresolved; that she had had a strained relationship with appellant in the months before her disappearance; that she had had neither sufficient money nor a vehicle with which to leave San Antonio.” *Fisher*, 851 S.W.2d 298, 304.

As was mentioned above, the record here reflects that Julie was neither seen nor heard from after she inexplicably went missing.²⁷ Julie vanished on Friday, March 26, 2010, leaving behind a good job, a young daughter who was the focus of her life, a boyfriend whom she planned to marry, and a host of close friends and family members. Julie Ann was “an above average” cell phone user (6 RR 244), and she was well known, by those close to her, to be dependable, highly

²⁷ At trial, defense counsel conceded that “it’s pretty obvious that she’s missing...” 7 RR 240.

communicative, and very responsive. After she disappeared that day, her friends and relatives—some of whom enjoyed daily contact with her— made repeated attempts to contact her on that day and thereafter but were unable do so. Multiple witnesses testified that her disappearance was completely out of character and inconsistent with her very specific plans for that day, for that weekend, and for the future.

Her newly-purchased car, still bearing temporary tags, was found abandoned on the following Sunday morning. Inside of the car was the asthma medication that had been prescribed for L.D. 3 RR 259. Julie’s relatives found it odd that the medicine was in the car. *Id.* at 259. That medication, picked up by Julie four days before she disappeared, was to be administered to the child “via nebulizer every 6 hours.” 6 RR 154; *see* State’s Exh. 106. Described as “a good mom,” Julie was very attentive to L.D.’s health needs and “always made sure she had her medicine, no matter what.” 3 RR 218; *see* 4 RR 12-13.

An APD officer working at the Austin Regional Intelligence Center used the resources of that agency in an attempt to locate Julie. Despite those efforts, he found no proof that Julie was alive after March 2010. 7 RR 234-36. A crime analyst with the Texas Department of Public Safety’s Missing Person’s Unit performed similar searches but likewise found no proof that Julie was still alive. *Id.* at 220-28. Police contacted the authorities in Colorado to see if anyone had

applied for a new driver's license under Julie's name or anything of that nature. No such information was found. 5 RR 16. According to the lead homicide detective, police were unable to find anything suggesting that Julie Gonzalez was still alive. 6 RR 279. He testified that police had no "credible evidence that Julie Ann is anywhere other than dead." *Id.* at 301.

Also bearing on this issue was the testimony of Justin Stewart regarding statements made by the appellant. The record supports a rational inference, based upon Stewart's testimony) and the rest of the evidence, that the appellant's assault on Julie resulted in her death.²⁸

²⁸ The Statement of Facts section of this brief is incorporated herein by this reference, as is the above section bearing the heading, "c. The confession is corroborated by other evidence."

4. The evidence supports a rational inference that the appellant caused Julie's death

The jury's verdict in this case is supported by a great deal of circumstantial evidence, some of which is summarized in the above sections of this brief.²⁹ Here, the record reflects the appellant's history of stalking Julie and engaging in violent behavior toward her. *See, e.g.*, 3 RR 76-77, 264; 4 RR 14. Indeed, he actually made an implicit threat to kill Julie, telling her that, if he could not have her or their daughter, then "nobody will." 3 RR 77. About a month before she disappeared, Julie told her supervisor, "If anything ever happened to me, it would be him." 3 RR 78.

On Friday, March 26, 2010, just days after that repeatedly telling her sister that she had "a bad feeling," Julie disappeared. 4 RR 21. Based on the entirety of the evidence, including the appellant's history of violent, threatening behavior toward Julie, the jury could rationally have concluded that this "bad feeling" was a fear that the appellant would act upon his threats.

The jury received compelling evidence that the appellant used Julie Ann's bank card and cell phone, beginning on the day that she went missing. The appellant's use of that phone to send deceptive messages to Julie's relatives and

²⁹ The Statement of Facts section of this brief is incorporated herein by this reference, as are the above sections bearing the headings, "c. The confession is corroborated by other evidence" and "3. The evidence supports a rational inference of death."

friends is especially significant because many of those communications provided false information regarding the very cause of her disappearance. The appellant deceived his neighbors by telling them that a woman had used Julie's bank card. 6 RR 76. He even "duped" and withheld material information from the police. 5 RR 61. The jury had good reason to disbelieve the various assertions that the appellant made regarding Julie's disappearance and good reason to disbelieve the suggestion that he played no role in it. As was pointed out above, the evidence in this case reflects the appellant's consciousness of guilt, which "is perhaps one of the strongest kinds of evidence of guilt." *Torres*, 794 S.W.2d 596, 598; *see Wells v. State*, 578 S.W.2d 118, 119.

Evidence established that Julie's phone was uncharacteristically present in the vicinity of the appellant's house for much of that day and the following day, and that the phone and the appellant's Xbox experienced significantly atypical usage on that Friday. And Julie's car was later found abandoned within "[p]retty easy walking distance" from the appellant's house. 7 RR 139.

On the very morning of Julie Ann's disappearance—while the appellant's mother and siblings were all away from their house—the phone company received reports of an outage, a disruption that was caused that morning by the act of digging behind the playhouse in the appellant's back yard. By the time a service technician checked the site of the disruption on the following Monday, that site had

been covered up by a woodpile.

On that same Monday, officers discovered the fresh, grave-sized trench under the large shed in the appellant's back yard. Police also found ashes and debris from items of burned clothing, one of which was a purple shoelace that appeared to be a drawstring for an item of clothing. 6 RR 95.

On the Saturday evening following Julie Ann's disappearance, the appellant, reluctant to step out of the shadows, was nevertheless seen to have scratches on his face. And, as was explained above, the evidence supports a rational inference that the conduct by which the appellant knocked Julie unconscious was an intentional act, clearly dangerous to life, that caused her death.

STATE’S REPLY TO THE FOURTH GROUND

THE THIRD COURT’S INFERENCES THE REGARDING STEWART’S TESTIMONY WERE RATIONAL AND SUPPORTED BY THE RECORD.

Argument and Authorities

In his fourth ground for review, the appellant claims that the Third Court’s finding of legal sufficiency was predicated upon that court’s “erroneous rendition of the evidence.” App. BOM at 65. This testimony relates to Justin Stewart’s testimony regarding statements made by the appellant about an altercation that the appellant had with a woman.³⁰ The appellant argues that the Third Court’s description of that testimony “is erroneous on two important points. First, Stewart never testified that Petitioner named the girl in the altercation as Julie. Second, Stewart never testified that Petitioner told him the incident occurred at his home.” App. Br. 67. Both claims lack merit.

³⁰ As was explained above, Stewart’s testimony supports a rational inference that the appellant’s altercation with Julie consisted of two distinct assaults. As for the first assault, Stewart’s testimony indicates that the appellant “wrestl[ed] around with” (7 RR 15) and “assaulted Julie” (*id.* at 35), that they fell, that she hit her head and bled, and that then “Julie she told him she was not going to let him see [L.D.] again and that he was going to jail” (*id.*). Regarding the appellant’s second assault on Julie, which Stewart characterized as “apparently the second time around,” the record supports an inference that, when the appellant “tried to stop her” from leaving (*id.* at 15), he “freaked out” (*id.* at 16) and “knocked [her] out” (*id.*), causing her to be “unconscious at the end of their struggle” (*id.* at 34).

1. The woman in the altercation was Julie

When viewed in the requisite light, the evidence supports a rational finding that Julie Ann Gonzalez was the woman who was knocked unconscious during the altercation described by Justin Stewart. Stewart's testimony referred to "Julie" (7 RR 35) and to "[L.D.]" (*id.*) **by name** and also referred to the woman as the appellant's "wife or girlfriend" (*id.* at 17). In addition, the testimony indicates that the appellant and the woman argued about some other guy in which the woman had "a romantic interest." *Id.* at 14. As was pointed out above, Julie Ann was involved, on the date of her disappearance, in a romantic relationship with Aaron Breaux. 3 RR 76-77. The record reflects that Julie had been so afraid about the appellant finding out that she was seeing Aaron that she even avoided saying Aaron's name in L.D.'s presence. 3 RR 246-47.

2. The altercation occurred in the appellant's home

Viewed in the requisite light, the evidence also supports a reasonable inference that the altercation occurred at the appellant's home. The record includes the following testimony from Justin Stewart regarding the altercation:

Q. Did he describe this as taking place – whose house did he describe this as taking place at?

A. I believe it was his house. I'm assuming it was a place where he stayed.

7 RR 17. Stewart also testified as follows:

Q. Do you recall if she was unconscious at the end of their struggle?

A. He -- yes.

Q. He did tell you that?

A. Yeah.

Q. And your recollection is that this took place in his house?

A. Yes, sir.

7 RR 34 (emphasis added); *see also* 7 RR 15 (“At one point she had -- they fell, and she hit her head. I don’t remember what he said, whether it was the table or counter. I think he said the counter or something. I don’t remember where he said this altercation happened inside the home.”).

3. Conclusion

In light of the applicable standard of review, this Court should reject the appellant’s claim that the evidence is insufficient to support the challenged inferences. Those inference are “reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict.” *Hooper*, 214 S.W.3d at 16-17.

PRAYER

WHEREFORE, the State of Texas respectfully prays that the Court of Criminal Appeals affirm the judgment of the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i), I hereby certify, based on the computer program used to generate this brief, that this brief contains 26,512 words, excluding words contained in those parts of the brief that Rule 9.4(i) exempts from inclusion in the word count.

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CERTIFICATE OF SERVICE

I certify that, on this 12th day of October, 2017, a true copy of the foregoing State's Brief on the Merits was sent to the following persons, via U.S. mail, email, facsimile, or electronically through the electronic filing manager:

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